

# Exhibit 11

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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DEL MAR SEAFOODS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. C-07-2952-WHA
	)	
BARRY COHEN, CHRIS COHEN (aka	)	
CHRISTENE COHEN), in personam	)	
and, F/V POINT LOMA, Official	)	
Number 515298, a 1968	)	
steel-hulled, 126-gross ton,	)	
70.8 foot long fishing vessel,	)	
her engines, tackle, furniture	)	
apparel, etc., in rem, and	)	
Does 1-10,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF  
DAVID ALAN KOBAK

January 8, 2008

REPORTED BY: RITA R. LERNER, CSR #3179 (2001-404169)

DAVID ALAN KOBAK

January 8, 2008

<p style="text-align: right;">18</p> <p>1 feel -- in your experience, was there much of a change 2 in the price of fish during that time? 3 A. We got just a teenie bit of a raise this last 4 year for 2007, but not a lot; just a few cents here and 5 there. 6 Q. If you had been -- the vessel was arrested on 7 June 7th of 2007 and was released on August 17th of 8 2007. Is that consistent with your recollection? 9 A. Yes. 10 Q. Had you been able to fish in that time period, 11 is it your feeling that you would have caught roughly 12 the same amount of fish that you had caught in 2006? 13 A. I imagine, yes. I don't know, though, for 14 sure, because up here there's different quotas and 15 stuff. But where I fish at, things change, so I 16 couldn't really go by anything there. 17 She has the stuff, but I guess you probably 18 have seen it, too. But I have kept a very good track of 19 the weather all the time the boat was tied up, and I 20 figured out all the trips that I could have fished when 21 the weather was good or when the weather was bad, and I 22 came up with that we could have fished 13 trips. So I 23 took the last 13 trips prior to that and added them up 24 to a gross, and they come up to \$150,000. I've taken 25 the last 13 trips since we got the boat back and come up</p>	<p style="text-align: right;">20</p> <p>1 in the preceding months before June than you do in that 2 time period between June and August? 3 A. I'd have to look back at my records to prove 4 any of this to let you know for sure. Fishing is pretty 5 much the same year-round for me, except you have some 6 glorious days like when we catch this petrale, and 7 sometimes when the dover are spawning, but I haven't run 8 across much of that recently. 9 Q. Let me show you what Barry Cohen has produced 10 to us. These are not yet Bates-numbered, but these were 11 handed to me at the deposition of David Cantrell 12 recently. We'll have this package marked as Exhibit 1. 13 (Whereupon, Exhibit 1 was 14 marked for identification.) 15 MR. POULOS: Q. Taking a look at Exhibit 1 -- 16 can I see this for a second? Can you look on with him? 17 If you look at the period from June 2006 to 18 August of 2006, you see the gross catch listed there is 19 17,846.99; 27,572.37; and then 12,142.75. Do you see 20 that? 21 A. Yes. 22 Q. You see that that is a significant drop down 23 from the gross for the periods of March, April and May 24 of 2006; right? 25 A. Okay.</p>
<p style="text-align: right;">19</p> <p>1 with like \$140,000 that the boat would have grossed. 2 Q. So doing this again, you figured out you could 3 have fished 13 trips? 4 A. Yes. 5 Q. And you figured out that in that 13 trips, you 6 could have grossed how much? 7 A. Somewhere in that area. 8 Q. 140 to 160? 9 A. Sure. 10 Q. Okay. And by "gross," you mean gross sales 11 before deductions of fuel and ice? 12 A. Yes. 13 Q. And what did you -- how did you reach that 14 calculation? 15 A. I just added up all the grosses from the fish 16 in the 13 trips before and the 13 trips afterwards. 17 Q. So you looked at the 13 trips immediately 18 preceding the arrest of the vessel? 19 A. Uh-huh. 20 Q. Yes? 21 A. I did both: Before and after. 22 Q. Right. And then you looked at the 13 trips 23 after? 24 A. Yes. 25 Q. Okay. Do you historically have higher catches</p>	<p style="text-align: right;">21</p> <p>1 Q. Do you see that? 2 A. Uh-huh. 3 Q. Yes? 4 A. Yes. 5 Q. And you see that it's actually also much lower 6 than the catch totals for September, August -- or 7 September, October and November of 2006; right? 8 A. Yes. 9 Q. Do you have an explanation for why in the -- 10 well, first of all, do you know if these figures are 11 accurate? 12 A. I hope they are. I don't know for sure. If 13 you have records of them back here from these pink 14 things, I see something there -- whether or not those 15 are accurate, if that's where you got these, these 16 settlement sheets -- the totals. 17 Q. Let's assume, because these have been produced 18 by Barry Cohen, that they are accurate. Do you have an 19 explanation for why the catch was lower in 2006 for the 20 months of June, July and August? 21 A. Well, not really, no. Only a couple of things. 22 Sometimes you go fishing and you don't catch much; 23 sometimes you go fishing and you break down. I'd have 24 to look at all of my records, and they're not with me, 25 to see if I went out and tried real hard and didn't</p>

6 (Pages 18 to 21)

<p style="text-align: right;">26</p> <p>1 Q. During the period that the vessel was under 2 arrest, were you paid at all? 3 A. Barry compensated us some, yes. 4 Q. How much did Barry compensate you personally? 5 A. He gave me checks for \$5,000. 6 Q. Total? 7 A. Total. 8 Q. I just want to be clear on this. So, for the 9 time period that the vessel was under arrest, from June 10 7th to August 17th of 2007, Barry paid you a total of 11 \$5,000 for that time period? 12 A. Yes, sir. 13 Q. How did he calculate that sum? 14 A. He just sent us some money occasionally. He 15 sent the crew men some money, too. They were sent to 16 stay in a hotel, because they live on the boat. They're 17 like vagrants, or whatever you want to call them. They 18 wander around with the fisheries. 19 Q. How much did Barry pay them? 20 A. I think he gave them 2,000 a piece. 21 Q. Total? 22 A. Total. 23 Q. When did he pay that money to you? 24 A. Just sent me a check occasionally. 25 Q. Was it during that time period that the vessel</p>	<p style="text-align: right;">28</p> <p>1 pending. 2 Occasionally, we'll put things on the record 3 for a judge to rule on later. Unless for some reason 4 you're instructed not to answer a question, you don't 5 have to worry too much about that. 6 Let's talk about when the vessel was arrested. 7 At the time of the arrest, the vessel was at the Hyde 8 Street Pier; correct? 9 A. Yes, sir. Right where you boarded it 10 yesterday. 11 Q. The vessel -- at the time of the arrest, you 12 were not on board the vessel; is that right? 13 A. Not at all. 14 Q. No, you were not on board the vessel? 15 A. No, I wasn't. If you want to know more, I came 16 to the boat that day, though, and left some groceries. 17 I left and came back later. 18 Q. Right. I'll get to that later. At the time of 19 the vessel's arrest, there was a fishing net on board 20 the vessel; correct? 21 A. Yes, sir. 22 Q. What type of a fishing net was that? 23 A. It's a big four-seam 120-foot footrope. I 24 can't think of the name of it now. 15-inch (inaudible 25 word) footrope on it. It's a big net.</p>
<p style="text-align: right;">27</p> <p>1 was under arrest, or did he send it to you later? 2 A. No. During that time period. That goes back 3 to where we had a problem with trying to get my stuff 4 off the boat. One of your attorneys here said to make 5 it simple handwritten, barely descriptive or whatever. 6 I didn't realize I had to go to her and have her print 7 something out for me. 8 I just said, dirty clothes in a hamper. I 9 don't know what more you'd need to know. Red-striped 10 socks. The boat doesn't own any of that stuff; it's our 11 stuff. 12 I could have went somewhere else, but the guys 13 had a sack or little bag of dirty clothes. They went to 14 a laundromat to wash their clothes that day, and they 15 came back to the boat and it was locked up. I didn't 16 see them. That's all they had with them. All of their 17 stuff, their fishing licenses; one of them had a 18 passport. Just their personal stuff is on that vessel, 19 locked up, and they can't get to it. 20 They had no fishing license. They could have 21 got a copy, if they had to, or they could have gone to 22 the secondhand store somewhere and got some clothing and 23 some rain gear, but it was kind of a bad situation for 24 all of us at the time. 25 Q. Move to strike as nonresponsive. No question</p>	<p style="text-align: right;">29</p> <p>1 Q. And that's used for fishing where it's over 150 2 fathoms or something? 3 A. Yes, sir. 4 Q. So it's fishing in the EEZ, the Exclusive 5 Economic Zone? 6 A. I guess. 7 Q. Is that more than three miles offshore? 8 A. Well, you've got to be outside of 150 fathoms, 9 whether it's three miles or 20 miles. 10 Q. Where does the vessel generally fish? 11 A. I usually fish off of Pigeon Point a lot, and 12 sometimes down to Point Sur. Back and forth in those 13 areas. 14 Q. And how far out? 15 A. Point Sur, I fish right in to three and a half 16 miles out to 15 miles. Up here, I fish mostly 20 miles 17 offshore when I've got that net, that big net. 18 Q. Generally speaking, you're more than three 19 miles offshore? 20 A. Yes, sir. 21 Q. And less than 200 miles offshore; right? 22 A. Yes. 23 Q. How frequently in 2007, before the vessel was 24 arrested, did the vessel fish inside of three miles? 25 A. Actually, I hadn't done any fishing inside of</p>

8 (Pages 26 to 29)

DAVID ALAN KOBAK

January 8, 2008

<p style="text-align: right;">30</p> <p>1 three miles, but I was getting ready to when the vessel  2 was arrested. The net was tied up on the deck, stacked  3 up so I could pick it up and get it off the boat and put  4 the other net back on. We were going to go make a trip  5 the next day or two after the vessel was arrested,  6 whenever the weather was good.  7 Q. So in the time period of the arrest, the big  8 net was on the deck of the vessel, ready to be  9 off-loaded?  10 A. Yes, sir.  11 Q. So it was off the spool?  12 A. Yes.  13 Q. There was another, smaller net that you would  14 use for fishing inside of three miles or in the  15 shallower water?  16 A. Well, that other net is what they call a  17 "selective flatfish trawl," and if you fish inside of  18 100 fathoms, it has to have an 8-inch roller thing on  19 the footrope. You have to have that net to fish inside  20 of 100 fathoms. 150, actually, but the RCA covers from  21 150 in to 100, so you can't fish there anyway. But I  22 can fish from the three-mile line to the 100-fathom  23 curve with that small net. I can use that small net  24 outside when I know I'm fishing for petrale. That's one  25 of the reasons we got the net. I got 70,000 pounds of</p>	<p style="text-align: right;">32</p> <p>1 to get you the exact dates, if you need them.  2 Q. Okay. Where was the smaller net when the  3 vessel was arrested?  4 A. It was on Pier 45, and there's a reason for  5 this. I'll have to tell you it's going to be a little  6 long.  7 The boat's big, as you notice, and the net that  8 I have on the boat is huge. To get that net off, I have  9 to lift it with a hook line, a hook line where the rope  10 is. I have to lift it up into the air, put the rope  11 under that, and take my truck there and pull it off on  12 Pier 45. And there's only one spot I can do that. The  13 hoist on Pier 45 will not lift that net, and it's too  14 big to put in my truck; it's huge. So I put one on  15 there and take the other one off in that same area like  16 that between the two buildings on that side of Pier 45  17 there.  18 Q. Okay. Pier 45 is not where the Point Loma was  19 berthed at the time of the arrest?  20 A. No, it's just right across from it, though.  21 Q. It's across the water?  22 A. That's right. Across the bay there, the water.  23 Q. Right. So the smaller fishing net was on a  24 dock across the water from where the Point Loma was  25 berthed?</p>
<p style="text-align: right;">31</p> <p>1 petrale with that new net when we first got it.  2 Q. When did you get that net?  3 A. That's a date I don't know, either. We got it  4 October, probably, of 2007, I would guess.  5 Q. So the net that was --  6 A. No. Actually, it was 2006; wasn't it?  7 Q. Okay.  8 A. Yeah.  9 Q. So how many times had you fished with this  10 smaller net before the vessel was arrested?  11 A. I used it for most of November and most of  12 December, and I took it off somewhere in there, but I'm  13 not real sure what dates. I have all that stuff on the  14 boat. I didn't realize I needed it; otherwise, I would  15 have brought it. So I don't know. Sorry.  16 Q. Where was -- the smaller net is the one that  17 has been alleged went missing at some time around the  18 time of the arrest?  19 A. Yes.  20 Q. So if we refer to that as the smaller net,  21 you'll understand what I'm referring to?  22 A. Yes, sir.  23 Q. So that smaller net you think was purchased or  24 obtained sometime in around October of '06?  25 A. Somewhere in that area. I'd have to look it up</p>	<p style="text-align: right;">33</p> <p>1 A. Yes, sir.  2 Q. The Hyde Street Pier is essentially -- is that  3 like Pier 49, then?  4 A. I don't know. Hyde Street Pier -- that's where  5 the old boats are there. But the fish dock -- I don't  6 know. The Hyde Street Pier is where the commercial  7 fishing vessels dock down.  8 MR. POULOS: Let me have marked as Exhibit 2  9 this photograph.  10 (Whereupon, Exhibit 2 was  11 marked for identification.)  12 MR. POULOS: Q. Exhibit 2 has Bates number  13 DMSI 00066. That's the number in the lower right-hand  14 corner, for your reference. This photograph shows the  15 Point Loma; correct?  16 A. Yes, sir.  17 Q. And it shows it tied up at the Hyde Street  18 Pier; is that correct?  19 A. Yes, sir.  20 Q. And in the distance, behind the vessel, across  21 the water there is Pier 45; is that right?  22 A. Yes, sir.  23 Q. So the net, the smaller net, was not even at  24 the same pier structure as the Point Loma?  25 A. No.</p>

9 (Pages 30 to 33)

<p style="text-align: right;">38</p> <p>1 anything, actually ultimately was not returned to you?</p> <p>2 A. I had guns on the boat, but those came back to</p> <p>3 me. But there was a pair of binoculars upstairs, pretty</p> <p>4 nice binoculars, which we never did find. I had to buy</p> <p>5 a new pair, because we had to have binoculars.</p> <p>6 Q. How much were the binoculars?</p> <p>7 A. It's in there, right there.</p> <p>8 Q. In the declaration?</p> <p>9 A. Yes. I wrote the price down there somewhere.</p> <p>10 Q. You handed me a declaration, and then on this</p> <p>11 declaration -- looks like it's original with your</p> <p>12 signature?</p> <p>13 A. It was, yes.</p> <p>14 Q. And then you have a bunch of handwritten notes</p> <p>15 on it.</p> <p>16 A. I just wrote down some stuff that came to mine</p> <p>17 as I'm reading it and thinking about coming here.</p> <p>18 Q. When did you make these notes?</p> <p>19 A. I made some today, in fact, on the back there.</p> <p>20 Q. The ones in red on the back?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What about the interlineations on the</p> <p>23 declaration itself?</p> <p>24 A. That's something I put on it immediately when</p> <p>25 got back, because whoever wrote it out there -- it says</p>	<p style="text-align: right;">40</p> <p>1 I went down many trails trying to find that net</p> <p>2 and I spent a lot of time doing it. I've been to part</p> <p>3 of Bodega Bay and wandered around other places, looking,</p> <p>4 and right up here, Pier 26, looking around in places,</p> <p>5 and I've never seen hide nor hair of it. Nobody knows</p> <p>6 anything about it. I've talked to everybody out on the</p> <p>7 dock out there at one time or the other. I got little</p> <p>8 leads here and there and I pulled them out, but none of</p> <p>9 them helped me.</p> <p>10 Q. How would you describe the condition of the</p> <p>11 Point Loma now?</p> <p>12 A. What do you think? It's a mess. It's been</p> <p>13 that way since I've been on it. It's too much for me to</p> <p>14 want to fix up. If it was my boat, I might have</p> <p>15 attacked it, but you can't expect me to get my crew to</p> <p>16 do that kind of work on that boat five or six days a</p> <p>17 week just to get it cleaned up. It would take a long</p> <p>18 time. It's sad that it's gotten in that shape.</p> <p>19 Q. Would you agree with me that it is in an</p> <p>20 advanced state of deterioration?</p> <p>21 A. Pretty much so, yes, sir. It still works -- is</p> <p>22 what my comment would be. It still works and everything</p> <p>23 works on it, and it's productive when we go fishing.</p> <p>24 Q. Is it true that there is no routine</p> <p>25 maintenance, but if something breaks, you fix it?</p>
<p style="text-align: right;">39</p> <p>1 8-foot or 8-inch or something -- didn't get it quite</p> <p>2 straight. I added little comments where it's in writing</p> <p>3 of what it should be.</p> <p>4 Q. Who owns the area where you were storing the</p> <p>5 smaller net?</p> <p>6 A. The harbor.</p> <p>7 Q. And who had given you permission to store it</p> <p>8 over there?</p> <p>9 A. Hedley Prince, the harbormaster there, which I</p> <p>10 found out later he shouldn't have, I guess. But I tried</p> <p>11 to talk to a lady called "Claudia Davison," and she got</p> <p>12 mad at me, wasn't very nice at all; wasn't receptive to</p> <p>13 the fact that it is a working fishing dock and that's a</p> <p>14 fishing vessel. And like I said, you can't take the net</p> <p>15 off anywhere else unless you hire a crane and put it on</p> <p>16 a flatbed truck. I'm not equipped to do all that stuff.</p> <p>17 I don't want to go that far. But he said it was all</p> <p>18 right if I set it there.</p> <p>19 Q. You don't have any reason to believe that</p> <p>20 Del Mar took the smaller fishing net, do you?</p> <p>21 A. It could have been just anybody, couldn't it?</p> <p>22 Q. You don't know?</p> <p>23 A. Do you believe that Joe Cappuccio would come up</p> <p>24 and take his net that he thought was his? What do you</p> <p>25 think?</p>	<p style="text-align: right;">41</p> <p>1 A. We do a certain amount of routine maintenance</p> <p>2 to keep stuff from falling apart, to a point. Like the</p> <p>3 rust you see and the damage that has already been done,</p> <p>4 and there's not much you can do about a lot of it. You</p> <p>5 work around it, and if stuff breaks, you have to fix it.</p> <p>6 Q. I noticed on the port's railing near the stern,</p> <p>7 there's a major chunk of metal missing from the railing</p> <p>8 area there.</p> <p>9 A. Yeah.</p> <p>10 Q. Is that pretty symptomatic of the condition of</p> <p>11 the vessel overall?</p> <p>12 A. I hope it's not that way everywhere, like the</p> <p>13 part under the water.</p> <p>14 Q. Right. It floats?</p> <p>15 A. It floats, yes. Haven't had any problems</p> <p>16 anywhere, but we keep our survival suits or life jackets</p> <p>17 available.</p> <p>18 Q. Let's take a break for just a few seconds so I</p> <p>19 can go ahead and make copies of these and attach them to</p> <p>20 the record.</p> <p>21 MS. FANGER: I haven't seen those yet. Can I</p> <p>22 take a look at these?</p> <p>23 MR. POULOS: Sure. While we're doing that,</p> <p>24 let's just jump ahead a minute. We'll mark that, then,</p> <p>25 as Exhibit 3.</p>

# Exhibit 12



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 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**DEFENDANTS BARRY COHEN,  
 CHRIS COHEN'S (aka CHRISTENE  
 COHEN) RESPONSE TO  
 PLAINTIFF'S FIRST SET OF  
 REQUESTS FOR ADMISSIONS**

PROPOUNDING PARTY: PLAINTIFF DEL MAR SEAFOODS, INC.

RESPONDING PARTY: DEFENDANTS BARRY and CHRISTINE COHEN

SET NO.: ONE

Defendants and Responding Parties, BARRY and CHRISTENE COHEN ("Responding Parties"), respond and object to Plaintiff's First Set of Requests for Admissions as follows.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action and are subject to all objections as to competence, relevance, materiality, propriety, and admissibility and any other objections or grounds that would require the exclusion of any statement made herein if such

DAVIS WRIGHT TREMAINE LLP



statement were made by a witness present and testifying in Court, all of which objections and grounds are reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by these responses. The fact that Responding Parties respond or object to any of the request for admissions should not be taken as an admission that Responding Parties accept or admit the existence of any facts assumed by such request for admissions, or that such response or objection constitutes admissible evidence as to any such assumed facts. The fact that Responding Parties respond to part or all of any request for admission is not intended to and shall not be construed to be a waiver by Responding Parties of any objection to any request for admission. Furthermore, Responding Parties' responses herein are made without waiving, and expressly reserving, the right: (a) to object to any effort to use any responses in any step or proceeding in this action or any other action, and (b) to object on any ground to other discovery requests regarding the subject matter of any request herein.

This action is still in the discovery phase and Responding Parties have not yet completed investigation of the facts related to the action; have not yet completed discovery in this action; and have not yet completed preparation for trial. Responding Parties' responses herein are based on, and reflect the current state of their knowledge. Responding Parties expressly reserve the right to supplement these responses at a later time should they deem such supplementation necessary or appropriate, but assume no obligation to do so.

## **RESPONSE TO REQUESTS FOR ADMISSIONS**

### **REQUEST FOR ADMISSION NO. 1:**

Admit that you are acting in this case as the agent for the interests of your marital community.

### **RESPONSE TO REQUEST NO 1:**

Responding Parties object to the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the terms "acting" and "agent" as vague and ambiguous. Without waiving these

1 objections, admit that Barry and Christene Cohen are each the agent of each other in their marital  
2 community.

3 **REQUEST FOR ADMISSION NO. 2:**

4 Admit that in 2004 you transferred the ownership of the F/V POINT LOMA (the "Vessel")  
5 to the F/V Point Loma Fishing Company, Inc.

6 **RESPONSE TO REQUEST NO 2:**

7 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
8 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving  
9 this objection, admit that Barry and Christene Cohen jointly transferred the ownership of the F/V  
10 Point Loma to the F/V Point Loma Fishing Company, Inc.

11 **REQUEST FOR ADMISSION NO. 3:**

12 Admit that you are the manager of the F/V Point Loma Fishing Company, Inc.

13 **RESPONSE TO REQUEST NO 3:**

14 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
15 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving  
16 this objection, admit that Barry Cohen is the manager of the F/V Point Loma Fishing Company,  
17 Inc.

18 **REQUEST FOR ADMISSION NO. 4:**

19 Admit that you and your wife each own 50% of the shares of the F/V Point Loma Fishing  
20 Company, Inc.

21 **RESPONSE TO REQUEST NO 4:**

22 Responding Parties object to the use of the term "you" and "your" as vague and ambiguous  
23 as to which responding party, Barry or Christene Cohen, the request is directed at. Without  
24 waiving this objection, admit that Barry and Christene Cohen each own 50% of the shares of the  
25 F/V Point Loma Fishing Company, Inc.

**REQUEST FOR ADMISSION NO. 5:**

Admit that in this case you are acting as the agent for the owner of the Vessel, the F/V Point Loma Fishing Company, Inc.

**RESPONSE TO REQUEST NO 5:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "agent" as vague and ambiguous. Without waiving these objections, admit that Barry Cohen is acting as the agent to the extent he is acting as manager of the F/V Point Fishing Company, Inc.

**REQUEST FOR ADMISSION NO. 6:**

Admit that you have never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California.

**RESPONSE TO REQUEST NO 6:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "fish" as vague and ambiguous to the extent Responding Parties make a distinction between "fishing" (catching fish) and "shrimping" (catching shrimp) activities. Without waiving these objections, admit that Barry Cohen has never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California although he used the Vessel only one time off the coast of Oregon approximately 8-10 years ago for shrimping activities and not for fishing.

**REQUEST FOR ADMISSION NO. 7:**

Admit that at the end of 2005, in a meeting with both Joe Cappuccio and Joe Roggio, they told you that Del Mar's bank that provided credit to Del Mar, had expressed its concern to Del Mar about the size of Del Mar's loan to you for the Vessel.

**RESPONSE TO REQUEST NO 7:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this

1 objection and without waiving it, deny that there was such a meeting with both Joe Cappuccio and  
 2 Joe Roggio to the extent Barry Cohen can not recollect for certainty that Joe Roggio was also at  
 3 the meeting.  
 4

5 **REQUEST FOR ADMISSION NO. 8:**

6 Admit that at the meeting with Joe Roggio and Joe Cappuccio at the end of 2005 Joe  
 7 Cappuccio asked you to make a large payment on the loan evidenced by the Note and Mortgage.

8 **RESPONSE TO REQUEST NO 8:**

9 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 10 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving  
 11 this objection, Barry Cohen responds that he can not recollect with certainty that both Joe Roggio  
 12 and Joe Cappuccio were at the meeting; but admit that at a meeting with at least Joe Cappuccio at  
 13 the end of 2005, Joe Cappuccio asked Barry Cohen to make a large payment on the loan evidenced  
 14 by the Note and Mortgage.

15 **REQUEST FOR ADMISSION NO. 9:**

16 Admit that you agreed with Del Mar that you would be responsible for the debts of your  
 17 sons, Michael and Leonard, to Del Mar arising from amounts they owed the Avila Beach joint  
 18 venture.

19 **RESPONSE TO REQUEST NO 9:**

20 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 21 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this  
 22 objection and without waiving it, Barry Cohen denies this request.

23 **REQUEST FOR ADMISSION NO. 10:**

24 Admit that when you made the \$175,000 payment to Del Mar, you told Joe Cappuccio you  
 25 would pay Del Mar the remaining balance owed to Del Mar.

26 **RESPONSE TO REQUEST NO 10:**

27 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 28 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving

1 this objection, admit that when Barry Cohen gave the check for \$175,000 to Joe Cappuccio, Joe  
2 Cappuccio said "thank you" and that when Barry Cohen said that he would pay the balance of the  
3 Note as soon as he could, Joe Cappuccio said that "it is such a small amount, I'm not even worried  
4 about it."

5  
6 **REQUEST FOR ADMISSION NO. 11:**

7 Admit that you asked Del Mar to inform you of the amounts of your sons, Michael and  
8 Leonard's, debts to the Avila Beach joint venture in November, 2005.

9 **RESPONSE TO REQUEST NO 11:**

10 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
11 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this  
12 objection and without waiving it, Barry Cohen denies he asked Del Mar to inform him of the  
13 amounts his sons, Michael and Leonard's, debts to the Avila Beach joint venture in November,  
14 2005.

15 **REQUEST FOR ADMISSION NO. 12:**

16 Admit that the reason you requested the amount of your son's debts to Del Mar was so that  
17 you would know how much debt you were assuming on their behalf and how much you would be  
18 entitled to be reimbursed by them.

19 **RESPONSE TO REQUEST NO 12:**

20 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
21 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
22 also object to the use of the phrase "requested the amount" as vague and ambiguous.  
23 Notwithstanding these objections and without waiving them, Barry Cohen denies this request.

24 **REQUEST FOR ADMISSION NO. 13:**

25 Admit that Joe Roggio provided you with a spreadsheet (DMSI 0001) detailing the debts  
26 and payments regarding your and your son's debts to Del Mar in November 2005 in response to  
27 your request for such information.  
28

**RESPONSE TO REQUEST NO 13:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that Joe Roggio gave him the spreadsheet labeled DMSI 0001 and therefore denies the remainder of this request in full. Barry Cohen admits that in or around November 2005, Joe Roggio gave him a spreadsheet titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, which is different than DMSI 0001.

**REQUEST FOR ADMISSION NO. 14:**

Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe Cappuccio that you disagreed with any of the amounts noted thereon.

**RESPONSE TO REQUEST NO 14:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled DMSI 0001 from Joe Roggio and therefore denies the remainder of the request in full. Barry Cohen admits that in or around November 2005, Joe Roggio gave him a different spreadsheet titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, and after looking at the spreadsheet, Barry Cohen told Joe Roggio that the information in the spreadsheet "didn't look right to me."

**REQUEST FOR ADMISSION NO. 15:**

Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe Cappuccio that you disagreed with how your payments had been applied as evidenced thereon.

**RESPONSE TO REQUEST NO 15:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled



1 DMSI 0001 from Joe Roggio and therefore denies the remainder of the request in full. Barry  
 2 Cohen admits that in or around November 2005, Joe Roggio gave him a different spreadsheet  
 3 titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of  
 4 Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, and after looking at the  
 5 spreadsheet, Barry Cohen told Joe Roggio that the information in the spreadsheet "didn't look  
 6 right to me."

7  
 8 **REQUEST FOR ADMISSION NO. 16:**

9 Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe  
 10 Cappuccio that you disagreed with treating the debts listed thereon under "Michael Cohen," "Olde  
 11 Port Inn," "Inventory," and "Point Loma" as advances under the Note and Mortgage.

12 **RESPONSE TO REQUEST NO 16:**

13 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 14 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this  
 15 objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled  
 16 DMSI 0001 and therefore denies the remainder of the request in full.

17 **REQUEST FOR ADMISSION NO. 17:**

18 Admit that after receiving the newer revised spreadsheet from Joe Roggio in approximately  
 19 December 2006, as you have stated in your Declaration dated July 9, 2007 on pg. 3, lines 2-4, you  
 20 never told Joe Roggio or Joe Cappuccio that you disagreed with treating the debts listed thereon  
 21 under "Olde Port Balance," "Point Loma Balance," and "Fees for Olde Port Case" as advances  
 22 under the Note and Mortgage.

23 **RESPONSE TO REQUEST NO 17:**

24 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 25 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
 26 also object to this request to the extent the statement in Barry Cohen's Declaration referred to in  
 27 this request appears at page 5 of the Declaration and not page 3. Notwithstanding these objections  
 28 and without waiving them, Barry Cohen denies this request.

**REQUEST FOR ADMISSION NO. 18:**

Admit that on or about January 30, 2007 that you authored the document DMSI 0078.

**RESPONSE TO REQUEST NO 18:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen responds that after a diligent search of his records he has no recollection of whether he authored the document DMSI 0078 and therefore denies this request.

**REQUEST FOR ADMISSION NO. 19:**

Admit that in approximately January 2007 Joe Roggio asked you to make payments on the amounts you owed Del Mar.

**RESPONSE TO REQUEST NO 19:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the phrase "the amounts you owe Del Mar" as vague and ambiguous as to what specific amounts are being referred to. Without waiving this objection, Barry Cohen admits that Joe Roggio asked him to make payments but Joe Roggio did not say what the payments would be for or state the amount that the payments should be.

**REQUEST FOR ADMISSION NO. 20:**

Admit that Del Mar has a valid maritime lien on the Vessel.

**RESPONSE TO REQUEST NO 20:**

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to what constitutes a valid maritime lien. Without waiving this objection, admit that if Del Mar has a valid Preferred Ship Mortgage, then it has a security interest in the Vessel in the form of a maritime lien.

**REQUEST FOR ADMISSION NO. 21:**

Admit that under the terms of the Mortgage that you signed (DMSI 0101 – DMSI 0110) Del Mar is not, and was not, required to give you notice before foreclosing on the Mortgage.

**RESPONSE TO REQUEST NO 21:**

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to the notice requirements under the terms of the Mortgage. Responding Parties also object that the use of the phrase "terms of the Mortgage" is vague and ambiguous as the "terms" of the Mortgage also include covenants of good faith and fair dealing, which in light of the extensive prior dealings among the parties and the lump-sum payment by the Cohens at the request of Plaintiff, required at minimum, an inquiry into the ability of the Cohens to make payments on the Note and notice prior to foreclosure. Notwithstanding these objections and without waiving them, deny.

**REQUEST FOR ADMISSION NO. 22:**

Admit that under the terms of the Mortgage that you signed (DMSI 0101 – DMSI 0110) there is no provision relieving you, the mortgagor, from your obligation to continue to make monthly payments even if you make a large payment in excess of your monthly obligation under the Note and Mortgage.

**RESPONSE TO REQUEST NO 22:**

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to the mortgagor's obligations under the terms of the Mortgage. Notwithstanding this objection and without waiving it, deny.

**REQUEST FOR ADMISSION NO. 23:**

Admit that under the terms of the Note and Mortgage you, the mortgagor, were, and are, required to make monthly payments of \$3,000 or 15% of the Vessel's monthly gross landing receipts starting on January 1, 2004 and continuing until paid in full.

**RESPONSE TO REQUEST NO 23:**

Responding parties deny this request. The parties amended the Note and payment obligations by their mutual performance in two ways: 1) the Cohens' lump-sum payment in the amount of \$175,000, that was not required under the terms of the Note, includes advance payments under the Note making them current to-date, and 2) Del Mar has never demanded interest on the Note at any time nor have the Cohens paid any interest on the Note.

**REQUEST FOR ADMISSION NO. 24:**

Admit that from January 1, 2004 until December 22, 2004 you failed to make a single payment to Del Mar towards your obligations under the Note and Mortgage.

**RESPONSE TO REQUEST NO 24:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving this objection, Barry Cohen admits this request.

**REQUEST FOR ADMISSION NO. 25:**

Admit that after your \$5,000 payment dated December 22, 2004 you did not make another payment until November 9, 2005.

**RESPONSE TO REQUEST NO 25:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that he did not make another payment by check until November 9, 2005, when the Cohens made a lump sum payment on the Note in the amount of \$175,000, although plaintiff's spreadsheet labeled DMSI 0001 shows other "payments" credited against the amount Barry Cohen allegedly owes them during the time period from December 22, 2004 to November 9, 2005.

**REQUEST FOR ADMISSION NO. 26:**

Admit that your last payment to Del Mar was on April 23, 2007.

**RESPONSE TO REQUEST NO 26:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that his last direct payment by check was April 23, 2007, although by virtue of his lump sum advance payment in the amount of \$175,000,

1 he continues to make payments and is current under the Note and Mortgage through at least  
2 February 2009.

3 **REQUEST FOR ADMISSION NO. 27:**

4 If your response to the previous Request was to admit it, also admit that after your last  
5 payment on April 23, 2007 there was an outstanding balance due under the Note and Mortgage.

6 **RESPONSE TO REQUEST NO 27:**

7 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
8 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
9 also object to the use of the term "payment" as to what type of payments this request is referring.  
10 Without waiving these objections, Barry Cohen admits that there is an outstanding balance  
11 remaining under the Note and Mortgage in the amount of \$27,000 although no payments are  
12 currently due until at least February 2009.

13 **REQUEST FOR ADMISSION NO. 28:**

14 If your response to Request No. 26 was anything other than an unqualified "admit," admit  
15 that you currently owe money to Del Mar under the Note and Mortgage.

16 **RESPONSE TO REQUEST NO 28:**

17 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
18 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
19 also object to the use of the term "payment" as to what type of payments this request is referring.  
20 Without waiving these objections, Barry Cohen admits that there is an outstanding balance  
21 remaining under the Note and Mortgage in the amount of \$27,000 although no payments are  
22 currently due until at least February 2009.

23 **REQUEST FOR ADMISSION NO. 29:**

24 Admit that the Vessel is your only source of income, other than Social Security.

25 **RESPONSE TO REQUEST NO 29:**

26 Responding Parties object to the use of the term "your" as vague and ambiguous as to  
27 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
28



1 also object as to the use of the phrase "source of income" as vague and ambiguous. Without  
2 waiving these objections, Barry Cohen admits that the Vessel is his only source of income, other  
3 than Social Security.  
4

5 **REQUEST FOR ADMISSION NO. 30:**

6 Admit that you wrote checks made out to yourself as payee on Del Mar's Wells Fargo  
7 account no. 4435703640.

8 **RESPONSE TO REQUEST NO 30:**

9 Responding Parties object to the use of the terms "you" and "yourself" as vague and  
10 ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at.  
11 Notwithstanding this objection and without waiving it, Barry Cohen cannot admit or deny this  
12 request because he lacks sufficient information to identify the account number of one of plaintiff's  
13 own checking accounts.

14 **REQUEST FOR ADMISSION NO. 31:**

15 If your response to the previous Request was to admit it, admit also that the checks your  
16 wrote on that account made payable to yourself as payee were not authorized by Del Mar.

17 **RESPONSE TO REQUEST NO 31:**

18 Responding Parties object to the use of the term "your" as vague and ambiguous as to  
19 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties  
20 also object to the use of the term "authorized" as vague and ambiguous. Notwithstanding these  
21 objections and without waiving them, Barry Cohen denies this request. Barry Cohen admits that,  
22 as manager and equal partner of the Avila Beach Joint Venture, he had the authority to write  
23 checks on behalf of the Avila Beach Joint Venture.

24 **REQUEST FOR ADMISSION NO. 32:**

25 Admit that you spent some of the money you obtained from Del Mar's Wells Fargo  
26 account no. 4435703640 on items that were not related to the Olde Port Fisheries joint venture.  
27  
28



**RESPONSE TO REQUEST NO 32:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen cannot admit or deny this request because he lacks sufficient information to identify the account number of one of plaintiff's own checking accounts. Barry Cohen further denies that there was a joint venture involving Old Port Fisheries.

**REQUEST FOR ADMISSION NO. 33:**

Admit that you agreed to pay Del Mar for its attorneys fees it incurred in the Avila Beach litigation you instituted against the Port of Avila Beach.

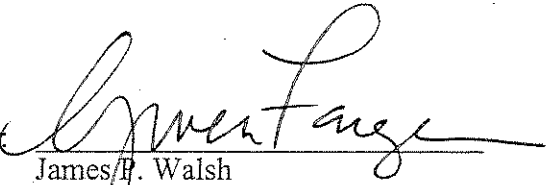
**RESPONSE TO REQUEST NO 33:**

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen admits that in a meeting with Joe Roggio, he tentatively and orally agreed to pay the legal fees; however, he received no consideration, felt pressure to make such an agreement as he was an employee of Del Mar at the time, never received an accounting as to the amount of the fees, and never agreed, orally or otherwise, to add these fees to the Note.

DATED this 21st day of December, 2007.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By   
James P. Walsh

Gwen Fanger

Attorneys for DEFENDANTS and  
CLAIMANT BARRY COHEN, CHRIS  
COHEN (aka CHRISTENE COHEN), the F/V  
POINT LOMA and Claimant, F/V POINT  
LOMA FISHING COMPANY, INC.

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

I caused to be served the foregoing **DEFENDANTS BARRY COHEN, CHRIS COHEN'S (aka CHRISTENE COHEN) RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS** on the parties indicated below by the following means:

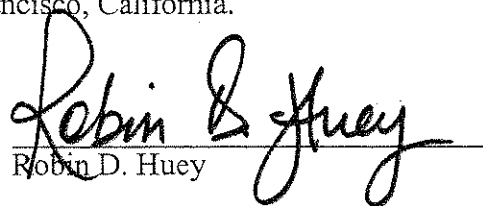
**I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on December 21, 2007, following the ordinary business practice to the following:**

Gregory W. Poulos  
Max L. Kelley  
Cox, Wootton, Griffin,  
Hansen & Poulos LLP  
190 The Embarcadero  
San Francisco, CA 94105

Richard P. Wagner  
The Law Offices of Richard P. Wagner  
400 Ocean Gate, Suite 700  
Long Beach, CA 90802

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on December 21, 2007, at San Francisco, California.

  
Robin D. Huey

# Exhibit 13

**Fanger, Gwen**

---

**From:** Walsh, James  
**Sent:** Friday, September 07, 2007 8:26 AM  
**To:** Fanger, Gwen  
**Subject:** FW: The Point Loma

**James Walsh** | Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800 | San Francisco, CA 94111  
Tel: (415) 276-6556 | Fax: (415) 276-6599  
Email: [budwalsh@dwt.com](mailto:budwalsh@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)  
Bio: [www.dwt.com/lawdir/attorneys/W/WalshJames.cfm](http://www.dwt.com/lawdir/attorneys/W/WalshJames.cfm)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

---

**From:** fishmancohen@aol.com [mailto:fishmancohen@aol.com]  
**Sent:** Wednesday, September 05, 2007 5:08 PM  
**To:** Walsh, James  
**Subject:** Fwd: The Point Loma

-----Original Message-----

**From:** revival@sonic.net  
**To:** fishmancohen@aol.com  
**Cc:** fishmancohen@aol.com  
**Sent:** Tue, 4 Sep 2007 7:04 pm  
**Subject:** The Point Loma

Enclosed is information requested for the Point Loma :

6/04/07-last trip delivered in San Francisco , gross was \$11,790.84

6/07/07-Boat was seized by U.S. Marshals

6/21/07-Boat was towed away by Parker Diving Services to Sugar Dock Richmond

Enclosed is weather information and information on trips missed.

6/06/07 thru 6/17/07 weather was bad N/W 30 knots

6/17/07 thru 6/22/07 weather was good missed 1 trip

6/23/07 thru 6/26/07 weather bad N/W 30 knots

6/27/07 thru 7/04/07 weather was good, missed two trips

10/12/2007

COHEN00056

7/05/07 thru 7/07/07 weather was bad

7/8/07 thru 7/28/07 weather was good missed 5 trips

7/29/07 thru 8/01/07 weather was bad

8/02/07 thru 8/016/07 weather was good missed 3 trips

8/17/07 weather bad

8/18/07 thru 8/21/07 weather good missed 1 trip

8/22/07 weather bad N/W 20 to 30 knots

8/23/07 weather good at Half Moon Bay bouy south 4 knots good forecast for  
friday thru monday 8/27/07 1 more missed trip if we do not get boat back  
in a timely manner. We did get boat back on Friday August 24th but unable  
to go fishing until August 28th due to order from Judge. Received  
information from Lawyer late Monday afternoon.

Total missed trips -13

---

Email and AIM finally together. You've gotta check out free AOL Mail!

# Exhibit 14



**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**RECEIVED FROM: **BARRY COHEN**  
PO BOX 40ZPOINT  
Fish & Game Tag #: **K127187**  
Delivery Date: **01/04/07**

WEIGHT		ITEM	PORT	UNIT PRICE	AMOUNT
14623.0	LPR	LARGE PETRALE RD WILD	SF	1.05000	15,354.15
				0.00000	0.00
68.0	SFLG	SABLE FISH LARGE WILD USA	SF	1.95000	132.60
				0.00000	0.00
107.0	SFM	SABLE FISH MED WILD USA	SF	1.55000	165.85
				0.00000	0.00
113.0	SFS	SABLE FISH SMALL WILD USA	SF	1.30000	146.90
				0.00000	0.00
59.0	SFEKS	SABLE FISH EX SMALL WILD USA	SF	1.10000	64.90
				0.00000	0.00
370.0	ER	ENGLISH ROUND WILD	SF	0.32000	118.40
				0.00000	0.00
2301.0	RFR	ROSE FISH ROUND WILD USA	SF	0.32000	736.32
				0.00000	0.00
	B-BACK	GROUND FISH BUYBACK			-835.96
17,641.0	Total Weight				

Gross Fish Receipts	16,719.12
	0.00
Deductions	-835.96
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	15,883.16

# 155264  
15883.16  
1-15-07

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

ZPOINT

Fish &amp; Game Tag #: K127189

Delivery Date: 01/24/07

RECEIVED FROM: BARRY COHEN  
PO BOX 40

WEIGHT		ITEM	PORT	UNIT PRICE	AMOUNT
272.0	DSSW	DOVER SOLE SW WILD	SF	0.38000	103.36
				0.00000	0.00
3037.0	LPR	LARGE PETRALE RD WILD	SF	0.75000	2,277.75
				0.00000	0.00
64.0	SFLG	SABLE FISH LARGE WILD USA	SF	1.95000	124.80
				0.00000	0.00
143.0	SFM	SABLE FISH MED WILD USA	SF	1.55000	221.65
				0.00000	0.00
304.0	SFS	SABLE FISH SMALL WILD USA	SF	1.30000	395.20
				0.00000	0.00
259.0	SFEYS	SABLE FISH EX SMALL WILD USA	SF	1.10000	284.90
				0.00000	0.00
30.0	RCR	ROCK COD ROUND WILD	SF	0.50000	15.00
				0.00000	0.00
48.0	THLG	THORNYHEADS LG WILD USA	SF	1.00000	48.00
				0.00000	0.00
185.0	ER	ENGLISH ROUND WILD	SF	0.32000	59.20
				0.00000	0.00
268.0	SNR	SPLIT NOSE ROCK FISH	SF	0.32000	85.76
	CA Assessment			0.00000	0.00
441.0	RSR	REX SOLE ROUND WILD USA	SF	0.33000	145.53
				0.00000	0.00
1426.0	MPR	MED PETRALE RD WILD	SF	0.38000	541.88
				-0.00000	0.00
	E-BACK	GROUND FISH BUYBACK			-215.15
6,477.0	Total Weight				

Gross Fish Receipts	4,303.03
	0.00
Deductions	-215.15
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	4,087.88

#156507

2-1-07

\$4087.88

27

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

ZPOINT

Fish & Game Tag #: **K127191**

Delivery Date: 02/01/07

RECEIVED FROM: **BARRY COHEN**  
PO BOX 40

WEIGHT		ITEM	PORT	UNIT PRICE	AMOUNT
7052.0	DSSW	DOVER SOLE SW WILD	SF	0.38000	2,679.76
				0.00000	0.00
62.0	LPR	LARGE PETRALE RD WILD	SF	0.75000	46.50
				0.00000	0.00
114.0	SFLG	SABLE FISH LARGE WILD USA	SF	1.95000	222.30
				0.00000	0.00
162.0	SFM	SABLE FISH MED WILD USA	SF	1.55000	251.10
				0.00000	0.00
3545.0	SNR	SPLIT NOSE ROCK FISH	SF	0.32000	1,134.40
	CA Assessment			0.00000	0.00
540.0	SFS	SABLE FISH SMALL WILD USA	SF	1.30000	702.00
				0.00000	0.00
1594.0	SFEKS	SABLE FISH EX SMALL WILD USA	SF	1.10000	1,753.40
				0.00000	0.00
185.0	RSR	REX SOLE ROUND WILD USA	SF	0.33000	61.05
				0.00000	0.00
2083.0	THLG	THORNYHEADS LG WILD USA	SF	1.00000	2,083.00
				0.00000	0.00
1055.0	THEX	THORNYHEADS EX SM WILD USA	SF	0.55000	580.25
				0.00000	0.00
4159.0	THSM	THORNYHEADS SM WILD USA	SF	0.60000	2,495.40
				0.00000	0.00
	B-BACK	GROUND FISH BUYBACK			-600.45
20,551.0	Total Weight				

Gross Fish Receipts	12,009.16
	0.00
Deductions:	-600.45
FMA Dues 0.09%	0.00
Other Deductions 0.09%	0.00
Amount Due	11,408.71

#156723  
2/2-07  
\$ 23810.10

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM: **BARRY COHEN**  
**PO BOX 40**

**ZPOINT**Fish & Game Tag #: **K127193**Delivery Date: **02/07/07**

WEIGHT		ITEM	PORT	UNIT PRICE	AMOUNT
3774.0	DSSW	DOVER SOLE SW WILD	SF	0.38000 0.00000	1,434.12 0.00
178.0	SFLG	SABLE FISH LARGE WILD USA	SF	1.95000 0.00000	347.10 0.00
564.0	SFM	SABLE FISH MED WILD USA	SF	1.55000 0.00000	874.20 0.00
1041.0	SFS	SABLE FISH SMALL WILD USA	SF	1.30000 0.00000	1,353.30 0.00
2012.0	SPEXS	SABLE FISH EX SMALL WILD USA	SF	1.10000 0.00000	2,213.20 0.00
4632.0	RCR	ROCK COD ROUND WILD	SF	0.50000 0.00000	2,316.00 0.00
1308.0	THLG	THORNYHEADS LG WILD USA	SF	1.00000 0.00000	1,308.00 0.00
4034.0	THSM	THORNYHEADS SM WILD USA	SF	0.60000 0.00000	2,420.40 0.00
35.0	SQF	SQUID FRESH WILD USA	SF	0.25000 0.00000	8.75 0.00
1526.0	SNR	SPLIT NOSE ROCK FISH	SF	0.32000 0.00000	488.32 0.00
9.0	LCR	LING COD ROUND WILD	SF	0.65000 0.00000	5.85 0.00
275.0	RSR	REX SOLE ROUND WILD USA	SF	0.33000 0.00000	90.75 0.00
647.0	THEX	THORNYHEADS EX SM WILD USA	SF	0.30000 0.00000	194.10 0.00
	B-BACK	GROUND FISH BUYBACK			-652.70
20,035.0	Total Weight				

Gross Fish Receipts	13,054.09
	0.00
Deductions	-652.70
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	12,401.39

## CAITO FISHERIES, INC.

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6360

FAX (707) 964-6439

## SETTLEMENT SHEET

ZPOINT

Fish &amp; Game Tag#: K127194

Delivery Date: 02/26/07

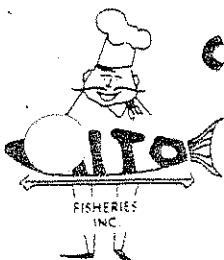
RECEIVED FROM: BARRY COHEN  
PO BOX 40

WEIGHT	ITEM	CODE	UNIT PRICE	TOTAL
18277.0	DSSW	DOVER SOLE SW WILD	SF 0.38000 0.00000	6,945.26 0.00
51.0	SFLG	SABLE FISH LARGE WILD USA	SF 1.95000 0.00000	99.45 0.00
175.0	SFM	SABLE FISH MED WILD USA	SF 1.55000 0.00000	271.25 0.00
468.0	SFS	SABLE FISH SMALL WILD USA	SF 1.30000 0.00000	608.40 0.00
1610.0	SFEMS	SABLE FISH EX SMALL WILD USA	SF 1.10000 0.00000	1,771.00 0.00
264.0	RCR	ROCK COD ROUND WILD	SF 0.50000 0.00000	132.00 0.00
953.0	THLG	THORNYHEADS LG WILD USA	SF 1.00000 0.00000	953.00 0.00
1773.0	THSM	THORNYHEADS SM WILD USA	SF 0.60000 0.00000	1,063.80 0.00
138.0	SNR	SPLIT NOSE ROCK FISH	SF 0.32000 0.00000	44.16 0.00
40.0	PSR	REX SOLE ROUND WILD USA	SF 0.33000 0.00000	13.20 0.00
409.0	THEX	THORNYHEADS EX SM WILD USA	SF 0.30000 0.00000	122.70 0.00
	B-BACK	GROUND FISH BUYBACK		-601.21

24,158.0 Total Weight

Gross Fish Receipts	12,024.22
Deductions	576 -601.21
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	11,423.01

3/11/07  
#157391  
\$11423.01

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM: **BARRY COHEN**  
**PO BOX 40**

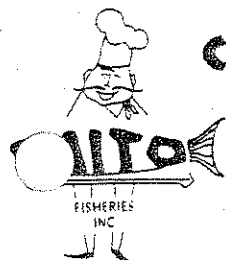
**ZPOINT**  
 Fish & Game Tag #: **K127197**  
 Delivery Date: **03/05/07**

WEIGHT		ITEM	PORT	UNIT PRICE	AMOUNT
15930.0	DSSW	DOVER SOLE SW WILD	SF	0.38000	6,053.40
				0.00000	0.00
1754.0	LPR	LARGE PETRALE RD WILD	SF	1.05000	1,841.70
				0.00000	0.00
103.0	SFLG	SABLE FISH LARGE WILD USA	SF	1.95000	200.85
				0.00000	0.00
370.0	SFM	SABLE FISH MED WILD USA	SF	1.55000	573.50
				0.00000	0.00
731.0	SFS	SABLE FISH SMALL WILD USA	SF	1.30000	950.30
				0.00000	0.00
1865.0	SFEXS	SABLE FISH EX SMALL WILD USA	SF	1.10000	2,051.50
				0.00000	0.00
264.0	SFEXX	SABLE FISH EXXSM WILD USA	SF	0.35000	92.40
				0.00000	0.00
924.0	THLG	THORNYHEADS LG WILD USA	SF	1.00000	924.00
				0.00000	0.00
2900.0	THSM	THORNYHEADS SM WILD USA	SF	0.60000	1,740.00
				0.00000	0.00
296.0	ER	ENGLISH ROUND WILD	SF	0.32000	94.72
				0.00000	0.00
200.0	SNR	SPLIT NOSE ROCK FISH	SF	0.32000	64.00
	CA Assessment			0.00000	0.00
372.0	RSR	REX SOLE ROUND WILD USA	SF	0.33000	122.76
				0.00000	0.00
146.0	MPR	MED PETRALE RD WILD	SF	0.38000	55.48
				0.00000	0.00
890.0	THEX	THORNYHEADS EX SM WILD USA	SF	0.30000	267.00
				0.00000	0.00
	B-BACK	GROUND FISH BUYBACK			-751.58

26,745.0 Total Weight

Gross Fish Receipts	15,031.61
	0.00
Deductions	-751.58
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	14,280.03



**CAITO FISHERIES, INC.**

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FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM:

BARRY COHEN  
PO BOX 40

ZPOINT

Fish &amp; Game Tag #: K127199

Delivery Date: 03/08/07

WEIGHT	ITEM	PORT	UNIT PRICE	AMOUNT
9044.0	DSSW	DOVER SOLE SW WILD	SF 0.38000	3,056.72
			0.00000	0.00
4085.0	LPR	LARGE PETRALE RD WILD	SF 1.05000	4,289.25
			0.00000	0.00
70.0	SFLG	SABLE FISH LARGE WILD USA	SF 1.95000	136.50
			0.00000	0.00
425.0	ER	ENGLISH ROUND WILD	SF 0.32000	155.20
			0.00000	0.00
253.0	SFM	SABLE FISH MED WILD USA	SF 1.55000	392.15
			0.00000	0.00
632.0	RFR	ROSE FISH ROUND WILD USA	SF 0.32000	202.24
			0.00000	0.00
857.0	SFS	SABLE FISH SMALL WILD USA	SF 1.30000	1,114.10
			0.00000	0.00
1282.0	SFEKS	SABLE FISH EX SMALL WILD USA	SF 1.10000	1,410.20
			0.00000	0.00
280.0	SFEKX	SABLE FISH EXXSM WILD USA	SF 0.35000	98.00
			0.00000	0.00
149.0	CHI	CHILLIES ROUND WILD USA	SF 0.50000	74.50
			0.00000	0.00
382.0	MPR	MED PETRALE RD WILD	SF 0.38000	145.16
			0.00000	0.00
700.0	THLG	THORNYHEADS LG WILD USA	SF 1.00000	700.00
			0.00000	0.00
1040.0	THEX	THORNYHEADS EX SM WILD USA	SF 0.30000	312.00
			0.00000	0.00
2412.0	THEM	THORNYHEADS SM WILD USA	SF 0.60000	1,447.20
			0.00000	0.00
	B-BACK	GROUND FISH BUYBACK		-676.66

20,671.0 Total Weight

Gross Fish Receipts	13,533.22
Deductions	-676.66
FMA Dues: 0.0%	0.00
Other Deductions: 0.0%	0.00
Amount Due	12,856.56

3/16/07  
#157732  
\$27136.59

21

**CAITO FISHERIES, INC.**

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FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM:

BARRY COHEN  
PO BOX 40

ZPOINT

Fish &amp; Game Tag #: K127158

Delivery Date: 04/23/07

WEIGHT	CODE	DESCRIPTION	UNIT	PRICE	AMOUNT
14306.0	DSSW	DOVER SOLE SW WILD	SF	0.40000	5,722.40
				0.00000	0.00
1510.0	LPR	LARGE PETRALE RD WILD	SF	1.10000	1,661.00
				0.00000	0.00
96.0	SFLG	SABLE FISH LARGE WILD USA	SF	2.00000	192.00
				0.00000	0.00
250.0	ER	ENGLISH ROUND WILD	SF	0.32000	80.00
				0.00000	0.00
162.0	SFM	SABLE FISH MED WILD USA	SF	1.60000	259.20
				0.00000	0.00
160.0	RFR	ROSE FISH ROUND WILD USA	SF	0.32000	115.20
				0.00000	0.00
456.0	SFS	SABLE FISH SMALL WILD USA	SF	1.35000	615.60
				0.00000	0.00
1445.0	SFEKS	SABLE FISH EX SMALL WILD USA	SF	1.10000	1,589.50
				0.00000	0.00
179.0	RGR	ROCK COD ROUND WILD	SF	0.50000	89.50
				0.00000	0.00
255.0	MPR	MED PETRALE RD WILD	SF	0.38000	96.90
				0.00000	0.00
572.0	THLG	THORNYHEADS LG WILD USA	SF	1.05000	600.60
				0.00000	0.00
777.0	THEX	THORNYHEADS EX SM WILD USA	SF	0.35000	271.95
				0.00000	0.00
2380.0	THSM	THORNYHEADS SM WILD USA	SF	0.65000	1,547.00
				0.00000	0.00
	B-BACK	GROUND FISH BUYBACK			-642.04

22,748.0 Total Weight

Gross Fish Receipts	12,840.85
	0.00
Deductions	-642.04
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	12,198.81

Ypd 5/3/1  
~~158702~~ 158844  
 \$12198.81

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**RECEIVED FROM: BARRY COHEN  
PO BOX 40ZPOINT  
Fish & Game Tag #: K127161  
Delivery Date: 05/05/07

WEIGHT	ITEM	PORT	UNIT PRICE	AMOUNT
8201.0	DSSW DOVER SOLE SW WILD	SF	0.40000	3,280.40
			0.00000	0.00
138.0	SFLG SABLE FISH LARGE WILD USA	SF	2.00000	276.00
			0.00000	0.00
406.0	SFM SABLE FISH MED WILD USA	SF	1.60000	649.60
			0.00000	0.00
1271.0	SFS SABLE FISH SMALL WILD USA	SF	1.35000	1,715.85
			0.00000	0.00
2458.0	SFEXS SABLE FISH EX SMALL WILD USA	SF	1.10000	2,703.80
			0.00000	0.00
280.0	RSR REX SOLE ROUND WILD USA	SF	0.36000	100.80
			0.00000	0.00
652.0	THLG THORNYHEADS LG WILD USA	SF	1.05000	684.60
			0.00000	0.00
544.0	THEX THORNYHEADS EX SM WILD USA	SF	0.35000	190.40
			0.00000	0.00
931.0	THSM THORNYHEADS SM WILD USA	SF	0.65000	605.15
			0.00000	0.00
B-BACK	GROUND FISH BUYBACK			-510.33
14,881.0	Total Weight			
Gross Fish Receipts				10,206.60
				0.00
Deductions				-510.33
FMA Dues 0.0%				0.00
Other Deductions 0.0%				0.00
Amount Due				9,696.27

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM:

BARRY COHEN  
PO BOX 40

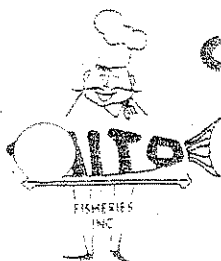
ZPOINT

Fish &amp; Game Tag #: K127162

Delivery Date: 05/10/07

WEIGHT	ITEM	PORT	UNIT PRICE	AMOUNT
25035.0	DSSW DOVER SOLE SW WILD	SF	0.39000 0.00000	9,763.65 0.00
101.0	SFLG SABLE FISH LARGE WILD USA	SF	2.00000 0.00000	202.00 0.00
235.0	SFM SABLE FISH MED WILD USA	SF	1.60000 0.00000	376.00 0.00
110.0	RFR ROSE FISH ROUND WILD USA	SF	0.32000 0.00000	35.20 0.00
470.0	SFS SABLE FISH SMALL WILD USA	SF	1.35000 0.00000	634.50 0.00
510.0	SFEXS SABLE FISH EX SMALL WILD USA	SF	1.10000 0.00000	1,661.00 0.00
70.0	SOF SQUID FRESH WILD USA	SF	0.20000 0.00000	14.00 0.00
175.0	SFEXX SABLE FISH EEXSM WILD USA	SF	0.35000 0.00000	61.25 0.00
1247.0	THLG THORNYHEADS LG WILD USA	SF	1.05000 0.00000	1,309.35 0.00
1803.0	THEX THORNYHEADS EX SM WILD USA	SF	0.35000 0.00000	631.05 0.00
2752.0	THSM THORNYHEADS SM WILD USA	SF	0.65000 0.00000	1,788.80 0.00
	B-BACK GROUND FISH BUYBACK			-823.84
33,508.0	Total Weight			
Gross Fish Receipts				16,476.80
Deductions				0.00
FMA Dues 0.0%				-823.84
Other Deductions 0.0%				0.00
Amount Due				15,652.96

5/15/07  
#158903  
\$25349.23

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437

TELEPHONE (707) 964-6368

FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM:

BARRY COHEN  
PO BOX 40

ZPOINT

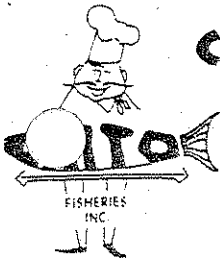
Fish &amp; Game Tag #: K127164

Delivery Date: 05/20/07

WEIGHT	ITEM	PORT	UNIT PRICE	AMOUNT
9149.0	DSSW	DOVER SOLE SW WILD	SF	0.39000
				0.00000
14.0	LPR	LARGE PETRALE RD WILD	SF	1.10000
				0.00000
84.0	SFLG	SABLE FISH LARGE WILD USA	SF	2.00000
				0.00000
236.0	SFM	SABLE FISH MED WILD USA	SF	1.60000
				0.00000
422.0	RFR	ROSE FISH ROUND WILD USA	SF	0.32000
				0.00000
493.0	SFS	SABLE FISH SMALL WILD USA	SF	1.35000
				0.00000
923.0	SFEXS	SABLE FISH EX SMALL WILD USA	SF	1.10000
				0.00000
122.0	RSR	REX SOLE ROUND WILD USA	SF	0.36000
				0.00000
116.0	SFEXX	SABLE FISH EXXSM WILD USA	SF	0.35000
				0.00000
437.0	THLG	THORNYHEADS LG WILD USA	SF	1.05000
				0.00000
929.0	THEX	THORNYHEADS EX SM WILD USA	SF	0.35000
				0.00000
1496.0	THSM	THORNYHEADS SM WILD USA	SF	0.65000
				0.00000
	B-BACK	GROUND FISH BUYBACK		
14,421.0	Total Weight			

Gross Fish Receipts	7,785.92
	0.00
Deductions	-389.30
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	7,396.62

pd ck# 159382  
6-1-07  
\$ 7396.62

**CAITO FISHERIES, INC.**

P.O. Box 1370, Fort Bragg, California 95437  
 TELEPHONE (707) 964-6368  
 FAX (707) 964-6439

**SETTLEMENT SHEET**

RECEIVED FROM: **BARRY COHEN**  
 PO BOX 40

**ZPOINT**  
 Fish & Game Tag #: **K127169**  
 Delivery Date: **06/04/07**

WEIGHT	ITEM	PORT	UNIT PRICE	AMOUNT
12860.0	DSSW DOVER SOLE SW WILD	SF	0.39000	5,015.40
			0.00000	0.00
605.0	SOF SQUID FRESH WILD USA	SF	0.20000	121.00
	C.A. Assessment		0.00000	0.00
109.0	SFLG SABLE FISH LARGE WILD USA	SF	2.00000	218.00
			0.00000	0.00
311.0	SFM SABLE FISH MED WILD USA	SF	1.60000	497.60
			0.00000	0.00
2703.0	RFR ROSE FISH ROUND WILD USA	SF	0.32000	864.96
			0.00000	0.00
750.0	SFS SABLE FISH SMALL WILD USA	SF	1.35000	1,012.50
			0.00000	0.00
5.0	SPEXS SABLE FISH EX SMALL WILD USA	SF	1.10000	2,161.50
			0.00000	0.00
90.0	RSR REX SOLE ROUND WILD USA	SF	0.36000	32.40
			0.00000	0.00
612.0	THLG THORNYHEADS LG WILD USA	SF	1.05000	642.60
			0.00000	0.00
1538.0	THEX THORNYHEADS EX SM WILD USA	SF	0.35000	538.30
			0.00000	0.00
2011.0	THSM THORNYHEADS SM WILD USA	SF	0.65000	1,307.15
			0.00000	0.00
	B-BACK GROUND FISH BUYBACK			-620.57

23,554.0 Total Weight

Gross Fish Receipts	12,411.41
	0.00
Deductions	-620.57
FMA Dues 0.0%	0.00
Other Deductions 0.0%	0.00
Amount Due	11,790.84

pd #159705  
 6/14/7  
 \$11,790.84

# Exhibit 15



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

---oOo---

**Condensed Transcript**

JG Jane GROSSMAN  
RS REPORTING Services

DEL MAR SEAFOODS, INC., )

Plaintiff, )

vs. )

No. C-07-2952-WHA

BARRY COHEN, CHRIS COHEN )  
(aka CHRISTENE COHEN), in )  
personam, and F/V POINT LOMA, )  
Official Number 515298, a )  
1968 steel-hulled, 126-gross )  
ton, 70.8 foot long fishing )  
vessel, her engines, tackle, )  
furniture apparel, etc., in )  
rem, and Does 1-10, )

Defendants. )

DEPOSITION OF JOSEPH FRANK CAPPUCCIO

December 14, 2007

Taken before JANE GROSSMAN

CSR No. 5225

JANE GROSSMAN REPORTING SERVICES  
Certified Shorthand Reporters  
1939 Harrison Street, Suite 460  
Oakland, California 94612  
(510) 444-4500

DEPOSITION OF JOSEPH FRANK CAPPUCCIO

<p>1 A. I had a pumpkin-cream-cheese muffin, and I'm 2 now having a cup of coffee. Nothing. 3 Q. Did you talk to Mr. Roggio? 4 A. No, I have not. Regarding this matter, no, I 5 did not. 6 Q. You did not talk to him about his deposition 7 yesterday? 8 A. No, I have not. 9 Q. Let's get some preliminaries out of the way. 10 Your home address would be, for the record, 11 please? 12 A. 59 Alta Mesa Circle, Monterey, California 13 93940. 14 Q. And you're currently employed as what? 15 A. President of Del Mar Seafoods. 16 Q. Where is Del Mar Seafoods located, please? 17 A. 331 Ford Street, Watsonville, California 18 95076. 19 Q. Is that the only plant for Del Mar Seafoods? 20 A. No. There's another factory in Oregon. 21 Q. Where in Oregon? 22 A. No. 2 Hangar Way, like the airplane hangar, 23 Astoria, Oregon 97103. 24 Q. Mr. Cappuccio, could you give me a summary, if 25 you could, of your education after high school, please?</p> <p style="text-align: right;">7</p>	<p>1 Q. Production of what? 2 A. Of seafood. Excuse me. I'm sorry. 3 Q. Did that mean that you were buying fish? 4 A. No. 5 Q. That you were producing it through -- 6 A. I supervised the packaging, freezing, general 7 seafood processing steps. 8 Q. So, U.S. Freezer -- did it sell fresh fish as 9 well as frozen fish? 10 A. Only frozen fish. 11 Q. Fillets mainly? 12 A. No. 13 Q. What was the form of the freezing? 14 A. Whole round frozen squid and herring. 15 Q. So, how long did you work for U.S. Freezer? 16 A. Three years -- approximately three years. 17 Q. Until about 1989? 18 A. That is correct. 19 Q. Then what did you do next for employment? 20 A. I -- then there was the creation of Del Mar 21 Seafoods. 22 Q. Who created Del Mar Seafoods? 23 A. Myself and my father, Santo Cappuccio. 24 Q. And was this formed as a partnership or a 25 corporation?</p> <p style="text-align: right;">9</p>
<p>1 A. I have a four-year bachelor's degree in 2 business and marketing. 3 Q. From what university, please? 4 A. University of the Pacific. 5 Q. University of the Pacific. Okay. 6 Do you have an MBA degree? 7 A. No, I do not. 8 Q. After you completed the University of the 9 Pacific -- what year was that? 10 A. 1986. 11 Q. What did you next do as employment? 12 A. I worked for my father's company, U.S. Freezer 13 Company, as an employee. 14 Q. U.S. Freezer Company? Could you describe what 15 U.S. Freezer Company is? 16 A. It's a seafood processing company, similar to 17 Del Mar Seafoods. 18 Q. Is it a predecessor to Del Mar, or is it a 19 separate company? 20 A. A separate company. 21 Q. Okay. What was your position with U.S. 22 Freezer? 23 A. Production supervisor. 24 Q. And what did you do in that position? 25 A. Supervised production.</p> <p style="text-align: right;">8</p>	<p>1 A. A C Corporation. 2 Q. A C Corporation? 3 A. A Chapter C Corporation. 4 Q. At that time did the two of you go into that 5 business exclusively at Del Mar Seafoods? 6 A. That is correct. 7 Q. What kind of seafood business did Del Mar 8 engage in? 9 A. Whole round frozen squid and herring. 10 Q. So, essentially the same business as U.S. 11 Freezer? 12 A. Exactly. 13 Q. And U.S. Freezer, did that go out of business? 14 A. No, it did not. 15 Q. It continued? 16 A. Absolutely. 17 Q. Okay. And where was Del Mar located during 18 this period of time when you and your father worked 19 together there? 20 A. Watsonville, California. 21 Q. Did you have other plants? 22 A. No. 23 Q. At any time since 1989, when you were with 24 Del Mar Seafoods, did Del Mar Seafoods also own vessels? 25 A. Yes.</p> <p style="text-align: right;">10</p>

## DEPOSITION OF JOSEPH FRANK CAPPUCCIO

1 Q. What kind of vessels?  
 2 A. Two purse seine vessels and one trawler. It's  
 3 purse seine, like "purse" and s-e-i-n-e.  
 4 Q. With regard to the purse seine vessels, which  
 5 fishery did they engage in?  
 6 A. The two purse seiners do squid and sardines.  
 7 The trawler does bottom fish.  
 8 Q. Today does Del Mar own any fishing vessels?  
 9 A. Only two purse seiners, the Ocean Angel I and  
 10 the Ocean Angel II.  
 11 Q. Do you personally own any vessels?  
 12 A. I own the limited liability corporations that  
 13 own the purse seine vessels.  
 14 Q. So, today you do not have a vessel that's  
 15 licensed for the groundfisheries?  
 16 A. Absolutely not.  
 17 Q. Why do you say, "Absolutely not"?  
 18 A. Oh, it's just -- no.  
 19 Q. When did you become president of Del Mar  
 20 Seafoods?  
 21 A. At its inception, 1989.  
 22 Q. 1989?  
 23 A. Or December of 1988, I think, thereabouts.  
 24 Q. So, was there any kind of -- you just formed  
 25 the company with your father; is that correct?

11

1 A. That's correct.  
 2 Q. And you were the exclusive stockholders or  
 3 interest-holders?  
 4 A. That is correct.  
 5 Q. Do you have a board of directors?  
 6 A. Yes, of course.  
 7 Q. Are you on the board of directors?  
 8 A. Yes, I am.  
 9 Q. Who else?  
 10 A. Joe Roggio.  
 11 Q. And who else?  
 12 A. Roseanne Rito.  
 13 Q. So, these are the only two companies that you  
 14 have ever worked for since you graduated from college;  
 15 is that correct?  
 16 A. That's correct.  
 17 Q. Let's start by asking some questions about  
 18 when you first met Mr. Barry Cohen.  
 19 When was that?  
 20 A. I don't remember exactly.  
 21 Q. Ten years ago?  
 22 A. I honestly don't remember exactly.  
 23 It was probably longer.  
 24 Q. If you can't remember the time, tell me what  
 25 were the circumstances under which you first met

12

1 Mr. Barry Cohen.  
 2 A. He owned and operated Olde Port Fisheries.  
 3 And we were a customer of his, buying two specific  
 4 species of fish from his facility.  
 5 Q. Where is Olde Port Fisheries located?  
 6 Avila Beach?  
 7 A. It was in Avila Beach, yes.  
 8 Q. And did you -- when you first met with him and  
 9 when you first got to know him, it was basically in the  
 10 capacity that you were his customer?  
 11 A. That is correct.  
 12 Q. What kind of fish did he sell to you again?  
 13 A. Black cod and channel rock.  
 14 Q. Was he a large supplier of fish to you?  
 15 A. He was the only supplier of channel rock and a  
 16 good supplier of black cod.  
 17 Q. What was sort of the annual --  
 18 A. I don't remember.  
 19 Q. You don't remember.  
 20 MR. POULOS: When you say "you," are you  
 21 referring to Del Mar or to U.S. Freezer?  
 22 You kept saying he was a customer of "you."  
 23 Which "you" are you referring to?  
 24 MR. WALSH: Well, I'm referring to him  
 25 personally about meeting him. That was my question.

13

1 MR. POULOS: Okay. Well, I don't think --  
 2 MR. WALSH: Well, I don't think you can think  
 3 what he thinks.  
 4 MR. POULOS: I'm going to object that it's  
 5 vague and ambiguous.  
 6 MR. WALSH: That's fine.  
 7 MR. POULOS: Do you understand that the "you"  
 8 is not your company, but it is you personally?  
 9 Were you personally buying the fish from  
 10 Mr. Cohen?  
 11 THE WITNESS: Del Mar Seafoods was purchasing  
 12 the fish from Mr. Cohen.  
 13 MR. POULOS: Thank you.  
 14 THE WITNESS: Sorry.  
 15 MR. WALSH: Q. Now, did you -- did you come  
 16 to enter into a joint venture with Mr. Cohen relating to  
 17 the Olde Port facility?  
 18 A. Yes.  
 19 Q. Do you recall what year that was?  
 20 A. No.  
 21 Q. Do you recall what the joint venture involved?  
 22 A. Vaguely, yes.  
 23 Q. Can you tell me what you recall?  
 24 A. We were to finance the receivables of his  
 25 fillet fish operation -- the company. And then Del Mar

14

1 Seafoods was to purchase -- remain purchasing or  
 2 continue to purchase the channel rock and black cod from  
 3 Olde Port Fisheries.  
 4 Q. Was there any agreement in writing with  
 5 respect to this joint venture?  
 6 A. I don't remember, honestly.  
 7 Q. Do you recall any of the terms of the joint  
 8 venture as to profit sharing or loss sharing?  
 9 A. We were to share the profits of Olde Port  
 10 Fisheries -- Del Mar Seafoods and Mr. Barry Cohen --  
 11 50/50 after all expenses.  
 12 Q. Now, how long did this joint venture continue?  
 13 Do you recall?  
 14 A. I don't remember exactly.  
 15 Q. Did you also have another business arrangement  
 16 with Mr. Cohen relative to some activities in Mexico?  
 17 A. Yes.  
 18 Q. Can you describe what those arrangements and  
 19 discussions were about?  
 20 A. It was a fishing operation in Mexico.  
 21 Q. What were you planning to do in Mexico?  
 22 A. Fish.  
 23 Q. How?  
 24 A. With a trawler.  
 25 Q. A U.S. trawler or a Mexican trawler?

15

1 A. A U.S. trawler with a Mexican flag.  
 2 Q. And were you going to invest in this  
 3 personally yourself or was Del Mar?  
 4 A. In what?  
 5 Q. The joint venture.  
 6 A. Invest in the joint venture? I bought a  
 7 permit for the trawler, which belonged to Barry.  
 8 Q. Was it the Mexican permit?  
 9 A. Yes.  
 10 Q. Were there any other details to this  
 11 arrangement that you can recall?  
 12 A. There were other details, but I don't recall  
 13 every one of them. I'm sorry.  
 14 Q. Let me ask you about whether Mr. Cohen ever  
 15 worked for you, Del Mar.  
 16 A. Mr. Cohen was employed by Del Mar Seafoods,  
 17 yes.  
 18 Q. Do you recall how long he was employed by  
 19 Del Mar Seafoods?  
 20 A. I don't exactly remember how long, no.  
 21 Q. Do you recall the time when he was no longer  
 22 employed? What that date was?  
 23 A. The day (sic), no.  
 24 Q. Did you yourself meet with him and tell him  
 25 that he was no longer employed?

16

1 A. Yes.  
 2 Q. What did you tell him?  
 3 A. He was no longer employed by Del Mar Seafoods.  
 4 Q. When was this? Do you recall?  
 5 A. I don't remember.  
 6 Q. Two years ago, ten years ago?  
 7 A. Sadly, I don't exactly remember.  
 8 Instead of speculating or guessing, as  
 9 instructed not to, I'll just say, "I don't remember."  
 10 Q. Do you recall a note entered into between  
 11 Del Mar Seafoods and Christene and Barry Cohen -- a  
 12 promissory note?  
 13 A. I know there's a note existing between  
 14 Del Mar Seafoods and Christene and Barry Cohen, yes.  
 15 Q. Did you review that note prior to it being  
 16 signed?  
 17 A. That would have been Joe Roggio's job.  
 18 Q. You didn't review it?  
 19 A. No.  
 20 Joe Roggio is more capable on that than I am.  
 21 Q. Did you know that there was a preferred ship  
 22 mortgage associated with that promissory note?  
 23 A. What is a "preferred ship mortgage"?  
 24 Q. You don't know what a "preferred ship  
 25 mortgage" is?

17

1 A. Not technically.  
 2 Q. Even though you own vessels, you have never  
 3 taken a loan secured by a preferred ship mortgage?  
 4 A. My boats are paid for.  
 5 Q. So, you've never yourself been involved in any  
 6 finance --  
 7 A. I --  
 8 Q. Let me finish.  
 9 A. Okay.  
 10 Q. -- any financing arrangement whereby you  
 11 needed to borrow money from somebody and secure it with  
 12 a mortgage?  
 13 A. Well, I've had a mortgage before, yeah.  
 14 Q. A ship mortgage?  
 15 A. Well, I've had a mortgage on homes, and I've  
 16 had bank loans for fishing boats.  
 17 Q. But you've never had an experience securing  
 18 any of these loans on a vessel with a ship mortgage?  
 19 A. I don't remember.  
 20 Q. Now, you're aware of the note.  
 21 Do you recall the size of the note?  
 22 A. Not exactly.  
 23 Q. Does \$215,000 spur your recollection?  
 24 A. It's a substantial amount.  
 25 Q. But you don't -- you yourself don't know if

18

DEPOSITION OF JOSEPH FRANK CAPPUCCIO

1 it's \$215,000?  
 2 A. That's Joe Roggio's job. He'll know exactly  
 3 to the penny what the mortgage would be.  
 4 Q. I see. Do you know if Del Mar Seafoods had  
 5 any other written promissory note with Mr. Cohen other  
 6 than the one that we've just discussed?  
 7 A. That would be Joe Roggio's job.  
 8 Q. Did there come a time in 2005 that you met  
 9 with Mr. Cohen to talk about concerns that had been  
 10 raised with this note by your bank?  
 11 A. I don't remember.  
 12 Q. So, you don't remember that you met with  
 13 Mr. Cohen and said, "The bank is concerned about the  
 14 size of the note, and I need some -- I need some help?"  
 15 A. I don't have any specific recollection.  
 16 Q. Do you recall in 2005 that there was an audit  
 17 of your company that raised a question about the size of  
 18 this note?  
 19 A. The bank audits loans of our size annually.  
 20 It's standard procedure.  
 21 Q. But do you recall the audit in 2005?  
 22 A. The bank audits every company of a company our  
 23 size annually.  
 24 But I don't remember or have any detailed  
 25 knowledge of the 2005 audit, no. I only assume there

19

1 was one.  
 2 Q. So, you didn't -- you never did talk to a bank  
 3 at any time?  
 4 A. That would have been Joe Roggio's department.  
 5 Q. So, you didn't discuss the note with the bank  
 6 at all?  
 7 A. That's Joe Roggio's job.  
 8 Q. That's Joe Roggio's job. Okay.  
 9 In this case, with respect to the note, do you  
 10 recall any of the terms of the note?  
 11 A. No.  
 12 Q. You don't recall if Mr. Cohen had to make  
 13 payments of \$3,000 a month, for example?  
 14 A. Joe Roggio would have worked that out with  
 15 Mr. Cohen.  
 16 Q. I see. Do you recall a time when  
 17 Mr. Barry Cohen came into your office and handed you a  
 18 check for \$175,000?  
 19 A. Yes, I remember that actually.  
 20 Q. Do you recall the date?  
 21 A. No. I told him, "That's great. Thank you.  
 22 Go give it to Joe Roggio."  
 23 Q. Was it in your office?  
 24 A. Yes, it was.  
 25 Q. Was it in the morning or in the afternoon?

20

1 A. I don't remember.  
 2 Q. You don't remember what month?  
 3 A. No.  
 4 Q. You don't remember what year?  
 5 A. No.  
 6 Q. Did you accept the \$175,000 check?  
 7 A. I was surprised he gave it to me. I kept  
 8 telling him, "Why are you giving it to me? Give it to  
 9 Joe Roggio."  
 10 Q. Did you have -- did you have any conversation  
 11 with Mr. Cohen after he handed you the check?  
 12 A. I don't really remember.  
 13 Q. Let's go back to the time just before you  
 14 asked lawyers to arrest the vessel, which would be  
 15 April/May of this year.  
 16 A. Okay.  
 17 Q. Okay. Did you have a conversation with  
 18 Joe Cappuccio -- I mean with Joe Roggio about  
 19 Barry Cohen and his loan?  
 20 A. Yes.  
 21 Q. When was this conversation?  
 22 A. I don't remember.  
 23 Q. What did you discuss in that conversation?  
 24 A. I don't remember.  
 25 Q. Well, didn't you discuss that you wanted to

21

1 consider a way to possibly arrest the vessel?  
 2 A. No.  
 3 Q. Do you remember whether you discussed  
 4 Mr. Cohen's divorce at that time with Mr. Roggio?  
 5 A. We discussed the security of the asset or the  
 6 money because his situation looked bad.  
 7 Q. Now, you said you discussed "the asset."  
 8 What asset would that be?  
 9 A. We wanted to make sure that our interest was  
 10 protected. Our asset was the fishing boat. We wanted  
 11 to make sure it was secure from possible financial  
 12 situations that could have got us -- to put Del Mar  
 13 Seafoods in a position that it would lose its security  
 14 of the loan.  
 15 Q. So, it's your testimony here today that you  
 16 and Mr. Roggio talked in detail about the vessel and its  
 17 security?  
 18 A. Not in detail. We just wanted to make sure  
 19 that the assets were protected, that our security was  
 20 enhanced with Barry's position.  
 21 Q. "Enhanced," did you say?  
 22 A. We wanted to make sure that the -- that our  
 23 collectibility of the debt was in a more safe and secure  
 24 position.  
 25 And I told him to do that.

22



1 Q. So, in order to make sure, what did you tell  
2 Mr. Roggio to do?  
3 A. Talk to our attorney.  
4 Q. Did you have any discussion about whether  
5 Mr. Roggio would investigate whether the vessel was, in  
6 fact, working at that time?  
7 A. Whether the boat was fishing?  
8 Q. Right.  
9 A. Yes, it was fishing.  
10 Q. Did you talk about it with Mr. Roggio?  
11 A. I don't remember.  
12 Q. Did you suggest to Mr. Roggio that he ought to  
13 call Barry on the phone and find out what's going on?  
14 A. I don't remember.  
15 Q. Did you suggest to Mr. Roggio that he ought to  
16 write a letter to Barry and to Chris Cohen and say,  
17 "What's your status? Can you pay the loan?"  
18 A. I don't remember.  
19 Q. Did you discuss with Mr. Roggio the amount of  
20 money that Barry might be owing?  
21 A. I don't specifically remember.  
22 Q. Do you recall if you asked Mr. Roggio to check  
23 the Coast Guard records to see who owned the boat?  
24 A. I don't remember.  
25 Q. I'm going to show you what is -- we're not

23

1 MR. WALSH: No.  
2 Q. So, you don't recall any such conversation?  
3 A. Not specifically, no.  
4 Q. Did you and Joe Roggio have any discussion  
5 about the ownership of the vessel relative to your  
6 security?  
7 A. Yeah. He's not -- we were surprised that the  
8 Coast Guard would allow the transfer without making us  
9 whole or at least notifying us.  
10 Q. Well, did somebody talk to the Coast Guard?  
11 A. No.  
12 We were just surprised that this could even  
13 happen without us being advised as lenders on this boat.  
14 He owed money based on this asset.  
15 I mean, you (sic) shouldn't be able to change  
16 title without making us whole or being notified. We'd  
17 have to sign off on that.  
18 Q. Now, did you have a discussion with Mr. Roggio  
19 before the vessel seizure?  
20 A. I don't specifically remember.  
21 Q. But you did have that conversation at some  
22 point?  
23 A. At some point, yes.  
24 Q. Okay.  
25 A. We were just kind of surprised that it was

25

1 going to mark this as an exhibit -- a bill of sale.  
2 What I'll tell you, Mr. Cappuccio, is that is  
3 a bill of sale that sells a vessel to a corporation.  
4 MR. POULOS: Do you have a copy for me?  
5 MR. WALSH: I think I gave one to you  
6 yesterday.  
7 MR. POULOS: You also said we weren't going to  
8 use the same exhibits.  
9 Fortunately, I think I brought my copies.  
10 MR. WALSH: Good. Good job.  
11 Q. My question is, Do you recall a time talking  
12 to Mr. Cohen about -- where he asked you a question  
13 about possibly putting his vessel into a corporation?  
14 A. I don't specifically remember.  
15 MR. POULOS: Do you want to wait a minute,  
16 Counsel, while I locate the document?  
17 MR. WALSH: That's all I've got.  
18 THE WITNESS: Keep that one (tendering).  
19 MR. WALSH: Keep that one.  
20 MR. POULOS: You marked it as an exhibit.  
21 MR. WALSH: It's not marked as an exhibit.  
22 I just wanted to refresh his recollection.  
23 It may be from yesterday.  
24 MR. POULOS: I thought you said you were  
25 marking it as Exhibit No. 1.

24

1 allowed to happen.  
2 Q. Now, you said you were concerned about  
3 Mr. Cohen's financial position.  
4 What was the basis of those concerns prior to  
5 the time that you asked the vessel to be seized?  
6 A. Well, my attorney in January, Richard Wagner,  
7 advised -- well, we saw the transcripts of some  
8 deposition where Barry admitted and said that if he  
9 were to lose the Avila case legal reimbursement that he  
10 was going to go bankrupt -- he was going to be forced  
11 into bankruptcy.  
12 Then his wife called the office. They were  
13 going through a real nasty divorce. And she accused him  
14 of beating her.  
15 So, I went, "Uh-oh. This is getting ugly."  
16 And that made me say, "We better secure the  
17 asset."  
18 And at that point, we advised their (sic)  
19 attorney what our options were.  
20 We never advised him what to do. We asked him  
21 what to do.  
22 Q. So, it was the call from your attorney and you  
23 said you got a call from Chris Cohen.  
24 A. The office did. I didn't personally receive  
25 the call from Chris Cohen.

26

## DEPOSITION OF JOSEPH FRANK CAPPUCCIO

1 Q. Who received the call from Chris Cohen?  
2 A. I'm not exactly sure.  
3 Q. During the period of time that we're talking  
4 about, from 1999 to 2006, did you ever have any business  
5 dealings with Chris Cohen yourself?  
6 A. No, uh-uh.  
7 Q. So, it was the lawsuit having to do with legal  
8 fees; correct?  
9 A. It was Barry's admission that he might be  
10 forced to declare bankruptcy if the Court were not to  
11 reimburse his legal fees in the Avila case. It was his  
12 testimony that prompted me to believe that he might be  
13 going bankrupt. It was his words verbatim.  
14 Q. You believed that he was going to go bankrupt?  
15 A. He did, and it was in writing. And I read it.  
16 And it was under oath and perjury and whatever (sic).  
17 He said he was going to go broke if he was not  
18 reimbursed his legal bills. In January I came to that  
19 knowledge.  
20 Q. Mr. Cappuccio, as you sit here today, now that  
21 you know that the vessel, the asset you were concerned  
22 about, is in a separate corporation, that it is not  
23 personally owned by Barry, do you feel more secure or  
24 less secure?  
25 A. I would --

27

1 MR. POULOS: I would just say I'm going to  
2 interpose an objection that that mischaracterizes the  
3 evidence, since the testimony is that Mr. Cohen is the  
4 sole owner of the corporation that he transferred the  
5 title to. So, it still is the corporation and his  
6 asset.  
7 MR. WALSH: Q. You can answer the question.  
8 A. I'm not an attorney. I'm a fish salesman. I  
9 don't know.  
10 Q. I know you're a fish salesman.  
11 But you, Mr. Cappuccio, just talked about  
12 concern about security of the asset.  
13 A. That's why I asked my attorney.  
14 Q. But you said you had conversations with  
15 Mr. Roggio about the security of the asset and the  
16 ownership issue having to do with the corporate owner.  
17 Didn't you just say that?  
18 A. We were -- we were commenting how the Coast  
19 Guard -- why would the Coast Guard let that transfer  
20 without notifying us.  
21 On mortgages for property, which I knew  
22 something about, the lender would be advised of any  
23 transfer of property and be made whole on any note  
24 against such said (sic) property.  
25 Now, maybe ships are different. I don't know.

28

1 I'm not an attorney.  
2 Q. But you have owned some fishing vessels;  
3 right?  
4 A. But that doesn't make me an attorney.  
5 Q. No, I'm sure it doesn't.  
6 But you didn't get any information out of that  
7 ownership about --  
8 A. I -- I'm a fish salesman.  
9 I'm really not an attorney. And that's why  
10 when I have issues like this, I call my attorney. And  
11 that's what I always do when I get stuff like this. And  
12 I say, "What's this?" And he explains it to me. And I  
13 pay him. That's how it usually works.  
14 I'm not a play attorney. I'm not an amateur  
15 attorney.  
16 Q. But you --  
17 A. I'm a fish salesman.  
18 Q. In terms of security, you are telling me you  
19 don't understand the difference in your security  
20 situation when the vessel is owned by a separate  
21 corporation, and Barry, you said, stated on the record  
22 that he personally was going to go into bankruptcy --  
23 so, you don't understand the difference?  
24 A. I understand enough to call my attorney. And  
25 if he doesn't understand that, I call my accountant.

29

1 Joe Roggio is a CPA.  
2 He's an attorney (indicating Mr. Poulos).  
3 I'm a fish salesman.  
4 I appreciate the credit you're giving me, but  
5 I'm not that -- I'm not that gifted. This is very  
6 confusing, meticulous, very specific knowledge that I  
7 just don't possess.  
8 Q. Then you don't understand that with a  
9 preferred ship mortgage, your debt is prior to any debt  
10 that would be personal to Barry?  
11 A. I don't know that. I am not an attorney.  
12 Q. Did you find that out before you seized the  
13 vessel or had the government arrest the vessel?  
14 A. I asked my attorney to collect the money and  
15 secure -- make sure that money was secure. And he did  
16 what he is supposed to do.  
17 Q. So, did you yourself personally go over with  
18 Joe Roggio all the debts that Mr. Cohen might owe before  
19 the arrest?  
20 A. You know, I'm sure I did, but I really don't  
21 specifically remember.  
22 Q. Yesterday we had a document called an  
23 "Assignment of Joint Venture."  
24 Have you ever heard of such a thing?  
25 A. Yes.

30



# Exhibit 16

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP**  
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Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN) *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8 foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1 through 10, inclusive,

Defendants.

And Related Counterclaims.

Case No. CV-07-02952 WHA

**PLAINTIFF'S RESPONSES TO  
DEFENDANTS' REQUEST FOR  
ADMISSIONS, SET ONE**

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA 94105  
TEL (415) 438-4600  
FAX (415) 438-4601

1 DEMANDING PARTY: Defendants BARRY COHEN, CHRIS COHEN (aka  
2 CHRISTENE COHEN), the F/V POINT LOMA and  
3 Claimant F/V POINT LOMA FISHING COMPANY,  
4 INC.

5 RESPONDING PARTY: Plaintiff DEL MAR SEAFOODS, INC.

6 SET NO.: ONE

7 Plaintiff DEL MAR SEAFOODS, INC. submits the following responses to  
8 Defendants' Request for Admissions, Set One:

9 **PRELIMINARY STATEMENT**

10 The following responses are based upon discovery and analysis available to date. It  
11 is anticipated that further discovery, analysis, independent investigation, legal research, and  
12 legal analysis will supply additional facts and add meaning to known facts as well as  
13 establish entirely new factual conclusions and legal contentions, all of which may lead to  
14 additions to and/or changes in the contentions set forth here. Because discovery and  
15 analysis are continuing, defendant's responses are subject to change, and are made without  
16 prejudice and under reservation of all rights to subsequently change any and all responses as  
17 additional facts may be ascertained or recalled, and where additional analysis, research or  
18 contentions are made. Subject to the above, the responses set forth below are as complete  
19 and straightforward as the information reasonably available to the defendant permits, and  
20 any Request for Admission that cannot be answered completely is answered to the extent  
21 possible.

22 **RESPONSES TO REQUESTS FOR ADMISSION**

23 **Request for Admission No. 1:**

24 Admit that document number COHEN 00014-00015, attached to Defendants' Initial  
25 Disclosures, is a true and correct copy of the "Assignment of Joint Venture Interest"  
26 prepared by, or at the direction of, Del Mar.

27 **Response to Request No. 1:**

28 Plaintiff admits that it is a true and correct copy but denies that it was prepared by,  
or at the direction of, Del Mar.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP

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**Request for Admission No. 2:**

Admit that Joe Roggio's signature appears on page 2 of the "Assignment of Joint Venture Interest" at COHEN 00015.

**Response to Request No. 2:**

Admitted.

**Request for Admission No. 3:**

Admit that Joe Roggio signed document number COHEN 00014-00015, "Assignment of Joint Venture Interest," effective October 22, 2004, on behalf of Plaintiff.

**Response to Request No. 3:**

Admitted.

**Request for Admission No. 4:**

Admit that document number DMSI 0098-0100, attached to Plaintiff's Supplemental Initial Disclosures, is a true and correct copy of the Promissory Note dated October 31, 2003, prepared by, or at the direction of, Del Mar.

**Response to Request No. 4:**

Plaintiff admits that it is a true and correct copy but denies that it was prepared by, or at the direction of, Del Mar, rather, it was prepared by agreement between the parties.

**Request for Admission No. 5:**

Admit that the document number DMSI 0101-0110, attached to Plaintiff's Supplemental Initial Disclosures, is a true and correct copy of the First Preferred Mortgage, dated October 31, 2003, prepared by, or at the direction of, Del Mar.

///

///

///

///

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA 94105  
TEL (415) 438-4600  
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Response to Request No. 5:

Plaintiff admits that it is a true and correct copy but denies that it was prepared by, or at the direction of, Del Mar, rather, it was prepared by agreement between the parties..

Dated: November 28, 2007

COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

By: \_\_\_\_\_

  
Gregory W. Poulos  
Max L. Kelley

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VERIFICATION

1  
2 L. JOE ROGGIO, hereby state:

3 1. I am an officer of DEL MAR SEAFOODS, INC., Plaintiff and Counter-  
4 Defendant in the instant action.

5 2. I have read the contents of the preceding Plaintiff's Responses to Defendants'  
6 First Request for Admissions and hereby verify the responses contained therein are true and  
7 correct to the best of my knowledge, information, and belief.

8 4. I am authorized on behalf of DEL MAR SEAFOODS, INC. to verify these  
9 responses.

10 I declare under penalty of perjury under the laws of the State of California and the  
11 United States that the forgoing is true and correct and that this verification was executed at  
12 Watsonville, California on November-29,-2007.

13  
14  
15   
16 JOE ROGGIO

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21  
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23  
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25  
26 COOL WOOTTON,  
GRIFPIN, HANSEN  
& POULOS, LLP  
27 FORKLEMAN/ADURU  
CENTER  
SUITE 1400  
SAN FRANCISCO,  
CA 94111  
28 TEL: (415) 435-4000  
FAX: (415) 435-4601

**PROOF OF SERVICE**

Case: *Del Mar Seafoods, Inc. v. Barry Cohen, Chris Cohen and F/V Point Loma*

Case No.: U.S. District Court, Northern Dist. Case No.: CV 07-02952 WHA

I am employed in the City and County of San Francisco by the law firm of COX, WOOTTON, GRIFFIN, HANSEN & POULOS, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On November 29, 2007, I served the attached document(s):

**PLAINTIFF'S RESPONSES TO DEFENDANTS' REQUEST FOR ADMISSIONS,**  
**SET ONE**

on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except facsimile transmission(s)), addressed as shown below, for service as designated below:

(A) By First Class Mail: I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I caused each such envelope to be delivered to a courier employed by FIRST LEGAL SUPPORT SERVICES or by WORLDWIDE ATTORNEY SERVICES, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

(D) By Federal Express: I caused each such envelope to be delivered to Federal Express Corporation at San Francisco, California, with whom we have a direct billing account, to be delivered to the addressee(s) on the next business day. I deposited each such envelope/package at the Three Embarcadero Center location of Federal Express Corporation.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

Dmsl:Point Loma/2304



(E) By Facsimile: I caused such document to be served via facsimile electronic equipment transmission (fax) on the party(ies) in this action by transmitting a true copy to the following fax numbers:

SERVICE	ADDRESSEE	PARTY REPRESENTED
A	James P. Walsh Gwen Fanger DAVIS WRIGHT TREMAINE LLP 505 Montgomery Street Suite 800 San Francisco, CA 94111 Tel: 415-276-6500 Fax: 415-276-6599 <a href="mailto:Budwalsh@dwt.com">Budwalsh@dwt.com</a>	Counsel for Defendants and Claimant BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and Claimant F/V POINT LOMA Fishing Company, Inc.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on November 29, 2007 at San Francisco, California.

\_\_\_\_\_  
Zoe Conner

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DmsL Point Loma/2504

# Exhibit 17

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**  
Gregory W. Poulos (SBN 131428)  
Max L. Kelley (SBN 205943)  
190 The Embarcadero  
San Francisco, CA 94105  
Telephone No.: 415-438-4600  
Facsimile No.: 415-438-4601

**LAW OFFICES OF RICHARD P. WAGNER**  
Richard P. Wagner (SBN 166792)  
700 Oceangate, Suite 700  
Long Beach, CA 90802  
Telephone: (562) 216-2946  
Facsimile: (562) 216-2960

Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**PLAINTIFF DEL MAR SEAFOODS,  
INC.'S DISCLOSURE OF EXPERT  
WITNESS**

Plaintiff DEL MAR SEAFOOD, INC. hereby discloses the following expert witness  
to testify at trial:

1. Kenneth D. Moore, to testify regarding the survey he performed on January 7,

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DelMarSeafoods2504

1 2008 of the defendant vessel F/V POINT LOMA regarding the vessel's valuation and  
2 condition.

3 2. Mr. Moore's expert report and qualifications are attached hereto as **Exhibit 1**.

4 3. Mr. Moore has not provided any deposition or trial testimony within the past  
5 four years, nor has he published any materials in the past 10 years.

6 4. Mr. Moore charges \$150 per hour for deposition and trial testimony. Mr.  
7 Moore's professional surveying rate is \$102.50 per hour.

8 5. A copy of Mr. Moore's expert report is attached hereto as **Exhibit 2**.

9 6. Plaintiff reserves the right to supplement this list with additional experts  
10 and/or to add to the opinions of its experts, and to call as its own expert those disclosed by  
11 any other party.

12  
13 Dated: January 11, 2008

COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

14  
15  
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17  
18 By:   
Max L. Kelley

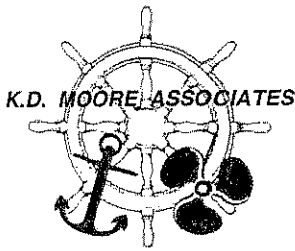
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GRIFFIN, HANSEN  
& POULOS LLP

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28 DelMarSeafoods/2504

## MARINE SURVEYORS

Crew & Passenger Injuries  
Hull Damage & Machinery Claims  
Cargo Surveys  
NAMS Cert. #105204



## CASUALTY INVESTIGATORS

Construction Liability Losses  
Machinery & Equipment Failures  
Energy Casualties  
CA Pvt. Invest. Lic. AQ007623

### RESUME OF EXPERIENCE

KENNETH D. MOORE

#### FORMAL EDUCATION

B.S. Nautical Science - 1954  
California Maritime Academy  
(Seamanship & Navigation)

Bachelor of Foreign Trade - 1958  
American Institute for Foreign Trade

#### EXPERIENCE

1968 - Present

Owner and Principal Surveyor  
K. D. Moore, Associates

Conducted wood, steel and fiberglass  
hull Condition & Value and Damage Surveys as  
well as Marina Facilities Inspections.  
Cargo Damage Surveys.  
Coordinate salvage operations.

Marine casualty investigations,  
counsel's consultant in litigation,  
expert witness.

1964 - 1968

Principal Surveyor, GAB, Inc.

Conducted wood, steel and fiberglass  
hull Condition & Value and Damage  
Surveys as well as Cargo Damage Surveys.  
Coordinate salvage operations.

1963 - 1964

Port Captain, American President Lines,  
San Francisco, CA

Planned and directly supervised loading  
and stowage of cargo, including various  
size and type containers on break-bulk  
vessels.

1960 - 1963

Container Operations Coordinator, Matson  
Navigation Company, San Francisco, CA

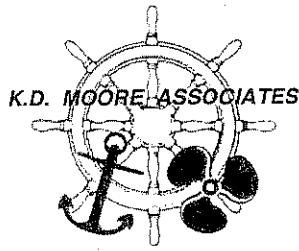
1958 - 1960

Lykes Lines: New Orleans, Los Angeles  
and Galveston, TX

Operations Manager, Lykes Caribbean  
Line, Pallet Container Operations.

**MARINE SURVEYORS**

Crew & Passenger Injuries  
Hull Damage & Machinery Claims  
Cargo Surveys  
NAMS Cert. #105204



**CASUALTY INVESTIGATORS**

Construction Liability Losses  
Machinery & Equipment Failures  
Energy Casualties  
CA Pvt. Invest. Lic. AQ007623

Resume/K. D. Moore/Page 2

**MILITARY**

1950 - 1984

Continuous active U.S. Naval Reserve participation with Military Sealift Command, including several Command assignments. Retired at rank of Captain.

**AFFILIATIONS**

National Association of Marine Surveyors  
past Chairman of Pacific Coast Screening  
and Examining Committee

Maritime Law Association of the United  
States

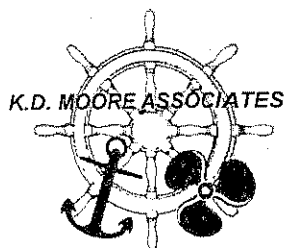
International Association of Marine  
Investigators

Licensed Private Investigator, State of  
California

Association of Marine Underwriters of San  
Francisco

**MARINE SURVEYORS**

Crew & Passenger Injuries  
Hull Damage & Machinery Claims  
Cargo Surveys  
NAMS Cert. #105204

**CASUALTY INVESTIGATORS**

Construction Liability Losses  
Machinery & Equipment Failures  
Energy Casualties  
CA Pvt. Invest. Lic. AQ007623

**SURVEY OF CONDITION AND VALUE**

OUR CASE: 16616-I

**SURVEY HELD AT THE REQUEST OF GREG POULOS, ATTORNEY, ON BEHALF OF INTERESTED PARTIES  
AT THE HYDE STREET HARBOR, SAN FRANCISCO, CA; ON THE 7<sup>TH</sup> DAY OF JANUARY, 2008.**

**GENERAL INFORMATION**

<b>OWNER</b> :	Barry Cohen Point Loma Fishing Company, Inc.	<b>ADDRESS</b> :	874 W. Grand Ave. Grover Beach, CA 93433
<b>VESSEL NAME</b> :	"POINT LOMA"	<b>REG. / DOC. #</b> :	515298
		<b>IMO NUMBER</b> :	7049354
<b>MOORAGE</b> :	Hyde Street Harbor, San Francisco, CA	<b>TONS - GROSS</b> :	126
		<b>NET</b> :	86
<b>TYPE VESSEL</b> :	Commercial Fishing Vessel	<b>INSPECTION ASHORE / AFLOAT</b> :	Afloat
<b>BUILDER</b> :	SIRACUSA SHIPYARD, INC. Syracuseville, LA	<b>YEAR BUILT</b> :	1968
<b>INTENDED SERVICE</b> :	Bottom Trawling		
<b>EST. PRESENT VALUE</b> :	\$140,000	<b>EST. REPLACEMENT VALUE</b> :	\$950,000

**HULL**

<b>LENGTH - LOA</b> :	76'	<b>REG</b> :	70.8'	<b>BEAM</b> :	21.5'	<b>DRAFT</b> :	10'	<b>DEPTH</b> :	11.7'
<b>PLANTING</b> :	3/8" Welded Steel	<b>TRANSVERSE/LONGITUDINAL FRAMING</b> :	5/16-3/8 x 4" Welded Steel bar; on 2' Centers						
<b>DATE LAST HAULED</b> :	Unknown	<b>CONVERTED / REBUILT</b> :	Converted from Shrimper to Trawler; Year unknown						

**PROPULSION MACHINERY**

<b># OF ENGINES</b> :	1	<b>MAKE</b> :	Caterpillar	<b>SPEED - AVG</b> :	7 Knots
<b>HP (TOTAL)</b> :	670	<b>MODEL</b> :	3412	<b>MAX</b> :	9 1/2 Knots
<b>SERIAL NOS</b> :	60M04036	<b>FUEL</b> :	Diesel	<b>TEMP. GAUGES</b> :	Yes
<b>ENGINE HRS</b> :	Unknown			<b>TYPE EXHAUST</b> :	Dry Stack
<b>OVHL DATE</b> :	Unknown				
<b>TURBOCHARGED</b> :	Yes			<b>KEEL COOLER</b> :	Yes
<b>BILGE PUMPS</b> :	3 hp Electric				



**UNDERWRITING SURVEY OF CONDITION AND VALUE / OUR CASE: 16616-I**  
**PAGE 2 of 5 / JANUARY 11, 2008**

**ELECTRICAL SYSTEM**

<b>GENERATOR MAKE</b>	: CT 3304	<b>HOURS</b>	: Unknown	<b>RATING</b>	: 65 KW
<b>BATTERIES</b>	: 4 HD	<b>CHOCKED</b>	: Yes	<b>COVERED</b>	: Yes
<b>WIRING</b>	: Adequate	<b>FUSED/BKR</b>	: Circuit Breakers	<b>WIRED FOR</b>	: 220 / 110 v
<b>RUNNING LIGHTS USCG APPROVED</b>			: Yes		

**TANKS AND FUEL LINES**

<b>NO. OF FUEL TANKS</b>	: 2	<b>SHUT-OFF VALVES ACCESSIBLE</b>	: Yes
<b>TOTAL FUEL CAPACITY</b>	: Est.10,000 gallons	<b>EQUIPPED WITH VENT LINES</b>	: Yes
<b>SHAPE</b>	: Integral with hull	<b>LOCATION OF FUEL LINES</b>	: Under deck; protected
<b>CONDITION</b>	: No Leaks Noted		
<b>NO. OF WATER TANKS</b>	: 1	<b>VENTS OVERBOARD</b>	: Yes
<b>TOTAL WATER CAPACITY</b>	: 7,000gallons		

**ALARM SYSTEMS**

**Alarm Panel on Bridge with the following Audio/visual Alarms:**

Main Water Level  
 Main Oil Pressure  
 Main Water Temperature  
 Auxiliary Water Level  
 Auxiliary Oil Pressure  
 Auxiliary Water Temperature  
 Hydraulic Tank Level  
 Engine room Bilge Alarm  
 Fish Hold Bilge Alarm  
 Lazarette Bilge Alarm  
 Fire  
 Gear Pressure

**GALLEY**

<b>TYPE OF STOVE</b>	: AC Electric	<b>MAKE</b>	: Admiral	<b>SECURED</b>	: Yes
<b>VENTILATION</b>	: Adequate	<b>OTHER</b>	: GE Microwave Toaster Coffee maker Hot plate Magic Chef Refrigerator Stainless Steel Double Sink Orion CCD-TV		

**UNDERWRITING SURVEY OF CONDITION AND VALUE / OUR CASE: 16616-I**  
**PAGE 3 of 5 / JANUARY 11, 2008**

**FIRE AND SAFETY**

<b>NO. OF EXTINGUISHERS</b> : 5	<b>TYPE / SIZE</b> : 5lb & 10lb ABC Dry Chemical
<b>DATE LAST INSP.</b> : 27 September 2007	<b>LOCATION</b> : Throughout vessel; Bridge, Main Passage, Engine room
<b>LIFE PRESERVERS</b> : 4 Adult	<b>LOCATION</b> : Staterooms
<b>OTHER RAFTS</b> : 1 "Zodiac"	<b>TYPE</b> : 4 person, inflatable <b>LOCATION</b> : Top of Pilot House
<b>SURVIVAL SUITS</b> : 4	<b>LOCATION</b> : Staterooms <b>FIRST AID KIT</b> : yes
<b>EPIRB</b> : Yes	<b>LOCATION</b> : Top of Pilot House <b>FLARES</b> : Yes
<b>RING BUOYS</b> : 2	<b>NO. WITH LIGHT</b> : 0 <b>NO. WITH LINE</b> : 2

**DOCK AND GROUND TACKLE**

<b>NO. OF ANCHORS</b> : 1	<b>TYPE/SIZE</b> : Stockless; estimated 300lb
<b>WINDLASS</b> : See comments	

**VESSEL LAYOUT**

**MAIN DECK:**

A. Fore Deck  
 B. Pilot house  
 C. Galley  
 D. Starboard Forward Stateroom  
 E. Portside Head and Shower  
 F. Starboard Amidships Stateroom  
 G. Starboard Aft Stateroom  
 H. Aft Fish Deck

**LOWER DECK:**

A. Forepeak  
 B. Forward Storage and Shop  
 C. Engine Room  
 D. Fish holds  
 E. Lazarette

**FISHING EQUIPMENT**

Masts- (2) 8" Diameter Steel Pipes  
 Boom- (1) 6" Diameter Steel Pipe  
 (1) Hydraulic Boom Hook Winch  
 (2) Hydraulic Drag Winches with 5/8" Wire Rope Drag Lines  
 (2) Steel Drag Doors  
 (2) Hydraulic Net Reels  
 (1) Large Drag Net on Aft Reel  
 (No Net on Forward Reel)

UNDERWRITING SURVEY OF CONDITION AND VALUE / OUR CASE: 16616-I  
PAGE 4 of 5 / JANUARY 11, 2008

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NAVIGATION / ELECTRONIC EQUIPMENT

**PILOT HOUSE:**

FURUNO Multi-scale Partition LP-1000  
FURUNO XBX Radio Beacon Receiver  
RDI Bridgwatch timer device  
FURUNO GPS Navigator GP 50 mk 2  
COMNAV Marine 2001 Auto Pilot  
FURUNO GaAs Radar display  
Standard horizon hailer  
FURUNO SSB Transceiver FS-1503  
West Marine VHF 600 DSC Radio  
FURUNO Color Video Sounder FCV-1000  
FURUNO Color Sonar  
Desktop PC  
NEWMAR 115-24-15R Radar  
(2) Orion CCD for cameras 2& 3 on deck  
Barometer / clock/ hydrometer  
DIRIGO gimbaled Compass  
Auxiliary Autohelm Compass  
Gages; oil pressure, oil temperature, Engine RPM, Water temperature, Rudder RPM  
COMNAV Rudder Angle Indicator

*Note: Some obsolete Electronic Equipment observed in pilot house; fastened to bulkheads but not in use.*

---

SURVEYORS COMMENTS

- In general, the vessel was found to be functional. However, the maintenance condition was very poor. The Captain advised this Surveyor at attendance that if something failed he would fix it to function. But, there was no preventive maintenance authorized. Most significantly he did not know when the vessel was last hauled nor hours of when the engines were last overhauled.
- The interior below deck surface are in exceptionally poor condition with heavy rust.
- The exterior coatings are rusting and do not appear to have been painted for some years.
- The bulwark rails are rusted through.
- The hydraulic hoses on all equipment are leaking and in need of replacement.
- The anchor windlass does not function and the wire rope rode is heavily rusted.
- This surveyor observed no evidence of preventive maintenance for several years.

Enclosure: Photographs (5 pages)

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**UNDERWRITING SURVEY OF CONDITION AND VALUE / OUR CASE: 16616-I  
PAGE 5 of 5 / JANUARY 11, 2008**

**THIS SURVEY IS IS NOT A CONDITION  
OF SALE OR TITLE TRANSFER**

-----  
This survey sets forth the apparent condition of the vessel, including hull, machinery, equipment and fittings and gear to the best of the surveyor's ability without borings, removal of bulkheads, panelings, ceilings or other portions of her structure without climbing masts or inspections of spars above that normally visible from the deck and without the operation or opening of her machinery, electronics or auxiliaries for internal examination of their operation for performance study; nor was any evaluation made of the vessel's stability. It represents the surveyor's honest and unbiased opinion, but in submitting this survey, it is understood by all parties concerned that this is survey is not to be considered a guarantee of its accuracy, nor does it create any liability on the part of the surveyor or his employers arising out of the reliance on information in this survey.

DATE: 01/11/08

\_\_\_\_\_  
Ken Moore, Marine Surveyor

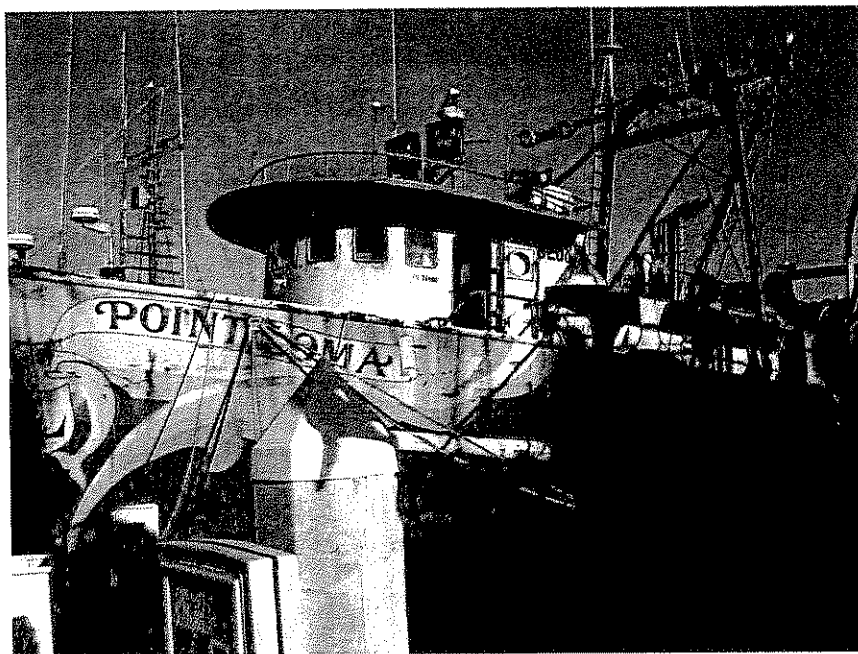
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/16616C&V

**VESSEL : F/V "POINT LOMA"**

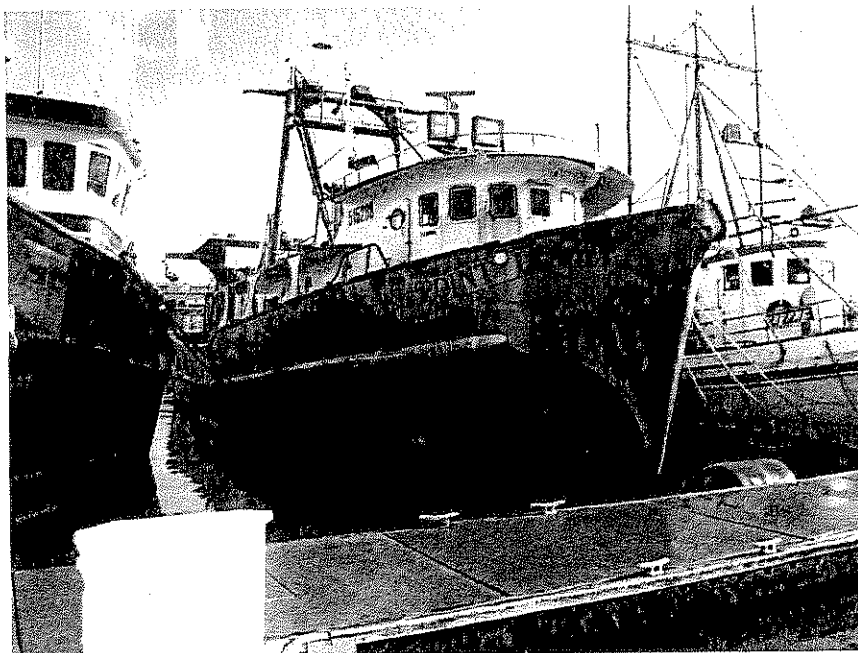
**OUR CASE: 16616-I**

The following photographs were taken by Surveyor Ken Moore, while in attendance at Hyde Street Harbor, San Francisco, CA on 01/07/08.

1. View of Port Bow;



2. View Starboard Bow;

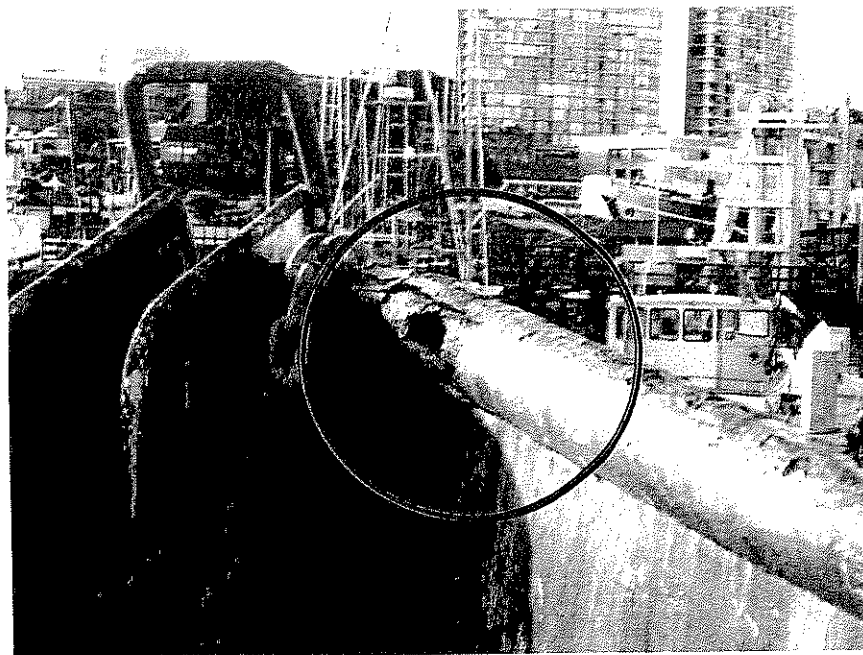


VESSEL : F/V "POINT LOMA"

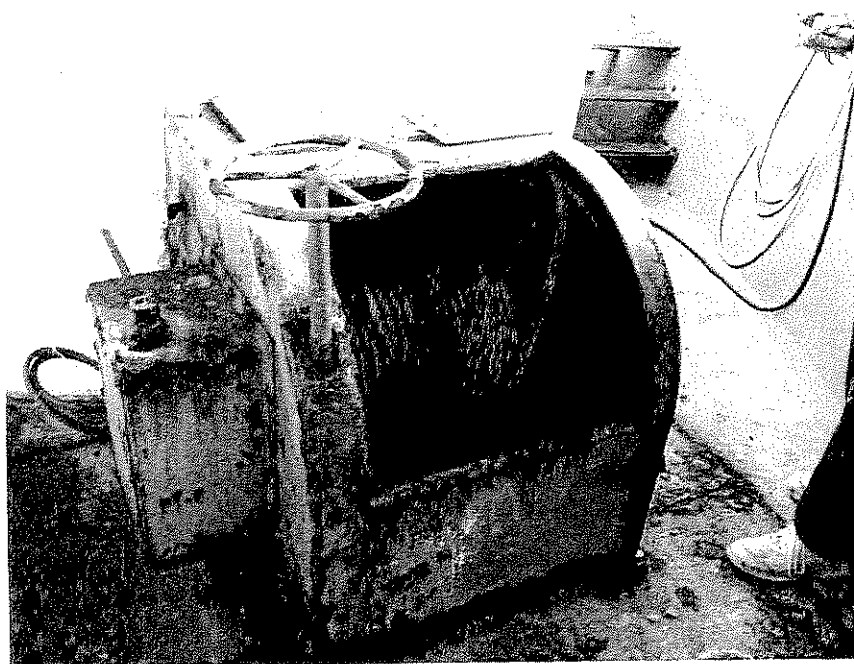
OUR CASE: 16616-I

PAGE 2 of 5

3. View Fore deck; note advanced corrosion on pipe rail.



4. View of forward anchor windlass; non-functioning.



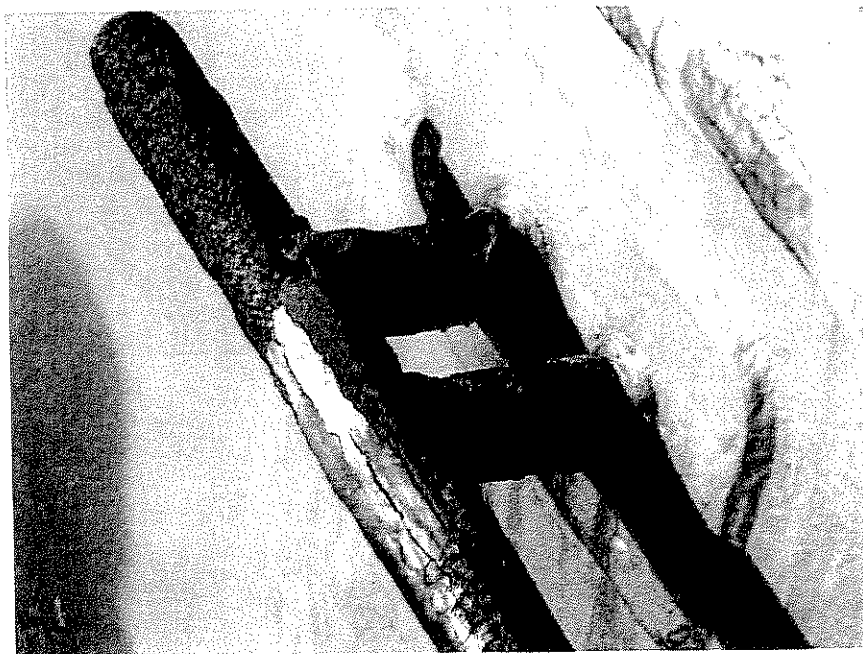


VESSEL : F/V "POINT LOMA"

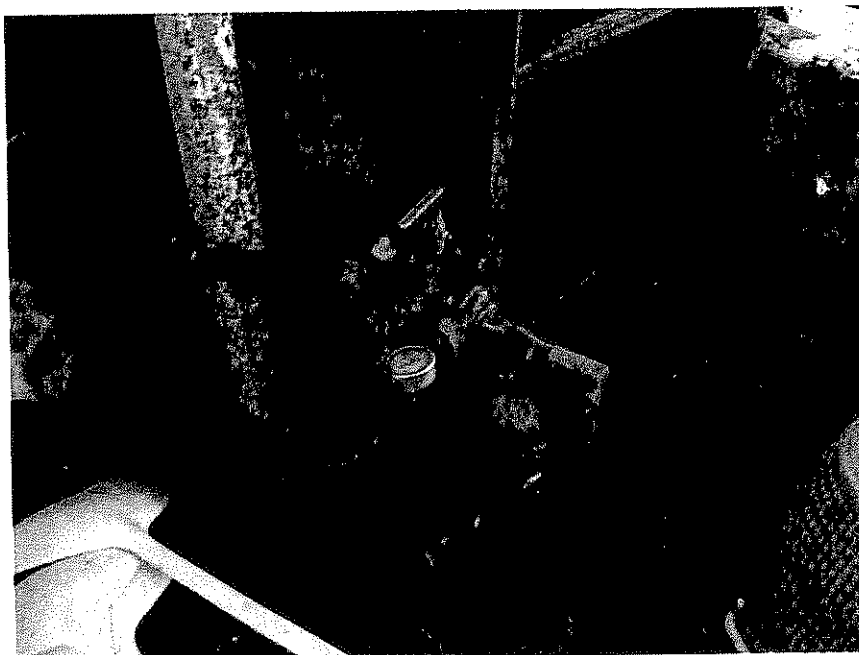
OUR CASE: 16616-I

PAGE 3 of 5

5. View of mooring cleat; note advanced corrosion, typical of all fittings and fixtures aboard vessel.



6. Typical view of hydraulic apparatus, fittings, and manifolds; note advanced corrosion.





VESSEL : F/V "POINT LOMA"

OUR CASE: 16616-I

PAGE 4 of 5

7. View of overhead in engine room; note advanced corrosion through deck plating.



8. View of Generator; condition typical of all internal machinery.



VESSEL : F/V "POINT LOMA"

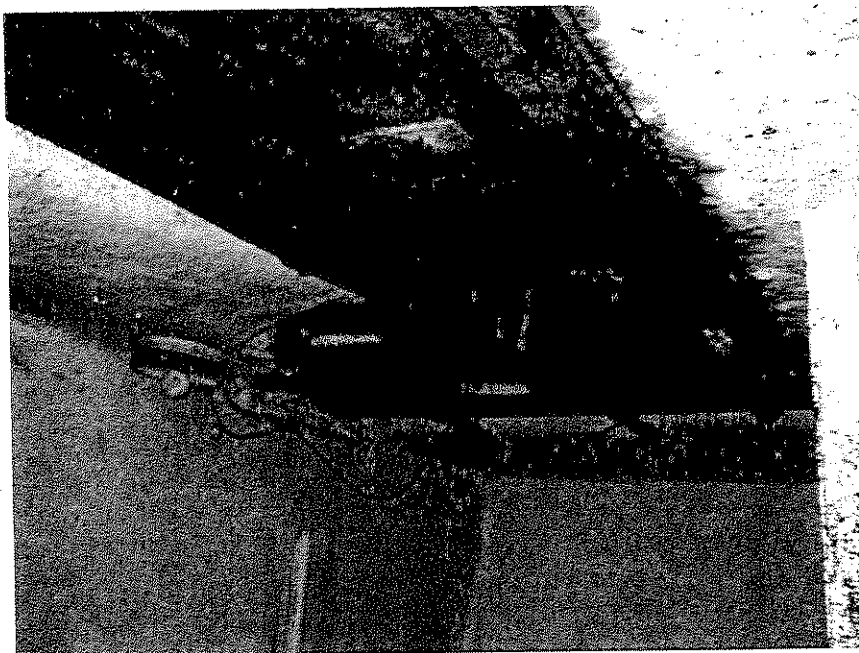
OUR CASE: 16616-I

PAGE 5 of 5

9. View Fish Hold;



10. Typical view of overhead in fish hold; note advanced corrosion to all ferrous components.



/frc  
/16616pho01.07.08

**PROOF OF SERVICE**

Case: *Del Mar Seafoods, Inc. v. Barry Cohen, Chris Cohen and F/V Point Loma*

Case No.: U.S. District Court, Northern Dist. Case No.: CV 07-02952 WHA

I am employed in the City and County of San Francisco by the law firm of COX, WOOTTON, GRIFFIN, HANSEN & POULOS, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On January 11, 2008, I served the attached document(s):

• **PLAINTIFF'S DISCLOSURE OF EXPERT WITNESS**

on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except facsimile transmission(s)), addressed as shown below, for service as designated below:

(A) By First Class Mail: I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I caused each such envelope to be delivered to a courier employed by FIRST LEGAL SUPPORT SERVICES or by WORLDWIDE ATTORNEY SERVICES, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

(D) By Federal Express: I caused each such envelope to be delivered to Federal Express Corporation at San Francisco, California, with whom we have a direct billing account, to be delivered to the addressee(s) on the next business day. I deposited each such envelope/package at the Three Embarcadero Center location of Federal Express Corporation.

(E) By Facsimile: I caused such document to be served via facsimile electronic equipment transmission (fax) on the party(ies) in this action by transmitting a true copy to the following fax numbers:

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

Dmsl, Point Loma/2504

<i>SERVICE</i>	<i>ADDRESSEE</i>	<i>PARTY REPRESENTED</i>
C	James P. Walsh Gwen Fanger DAVIS WRIGHT TREMAINE LLP 505 Montgomery Street Suite 800 San Francisco, CA 94111 Tel: 415-276-6500 Fax: 415-276-6599 Budwalsh@dwt.com	Counsel for Defendants and Claimant BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and Claimant F/V POINT LOMA Fishing Company, Inc.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on January 11, 2008 at San Francisco, California.

\_\_\_\_\_  
Zoe Conner

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

Dansi, Point Loma/2504

# Exhibit 18

**WELLS  
FARGO**

Wells Fargo Insurance Services of Oregon, Inc.

**Fax Transmittal Sheet**

1231-A SE Bay Boulevard  
P.O. Box 1610  
Newport, OR 97365  
541.265.4500 / 800.451.9850  
541.265.4262 Fax

<b>To:</b>	GWEN FANGER	<b>From:</b>	VICKI MASSIE
<b>Date:</b>	1/9/08	<b>Time:</b>	11:20 AM
<b>Location:</b>	DAVIS, WRIGHT & TREMAIN	<b>RE:</b>	BARRY COHEN
<b>Fax Number:</b>	415.276.6599	<b>Number of Pages:</b>	13 (Including Cover Page)

**Comments:** F/V "POINT LOMA"

DEAR GWEN:

FURTHER OUR CONVERSATION, TO FOLLOW, PLEASE FIND DECLARATION/POLICY COVER PAGES FROM DECEMBER 2003 TO CURRENT POLICY RENEWAL.

REGARDS,



VICKI MASSIE

**Confidentiality Notice:** The information contained in this facsimile message, and in any accompanying documents, constitutes confidential information belonging to Wells Fargo Insurance Services and is intended only for the use of the individual or entity named above. If you are not the intended recipient of this communication, you are hereby notified that any dissemination, disclosure, copying, or the taking of any action in reliance on this communication, is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U.S. Postal Service.

If you do not receive the entire fax, please contact the sender immediately.



**Acordia of Oregon, Inc.**

P.O. Box 1610 Newport, Oregon 97365 \* 1-800-451-9850 \* Fax (541) 265-4262  
1213-A S.E. Bay Boulevard, Newport, Oregon 97365

POLICY NO. YA-03253

**POLICY OF INSURANCE**

(Combined Companies Form)

In consideration of the premium as hereinafter stated, the various companies named herein, severally but not jointly, do hereby insure the assured named herein, for the amounts and proportions, set opposite their respective names. All subject to the terms and conditions of the forms and endorsements attached herein:

Assured: **BARRY COHEN**  
**C/O OLD POINT FISHERIES**  
**P.O. BOX 40, AVILA BEACH, CA 93424**

For account of: **HIMSELF**

Loss, if any, payable to: **ASSUREDS OR ORDER**

Total amount insured: (100%) **\$250,000.00 H&M/\$1,000,000.00 P&I**

Interest: **HULL & MACHINERY/PROTECTION & INDEMNITY**

Vessel(s): **F/V "POINT LOMA"**

At and From: **NOVEMBER 23, 2003, Noon, Pacific Standard Time to**  
**NOVEMBER 23, 2004 Noon, Pacific Standard Time.**

Conditions: (as per form and endorsement attached)

**TRADING/LAY UP WARRANTY, INSTITUTE SERVICE OF SUIT;BROKERS AND/OR AGENTS CANCELLATION CLAUSE/LIEN CLAUSE; FISHING VESSEL CLAUSES;P&I FISHING VESSEL CLAUSES; INSTITUTE EXTENDED RADIOACTIVE CONTAMINATION EXCLUSION END.,TRIA END;INSTITUTE CHEMICAL, BIOLOGICAL, BIO-CHEMICAL,ELECTROMGNETIC WEAPONS & CYBER ATTACH EXCLUSION CLAUSE; AMERICAN INSTITUTE HULL CLAUSES;POLLUTION EXCLUSION;SP-38 P&I CLAUSES;PREMIUM FINANCE END;TRIA EXCLUSION;**

Amount Insured Hereunder: **\$250,000.00 H&M**  
**\$1,000,000.00 P&I**

**RATE: 3.45%**  
**AGREED**

**PREMIUM** **\$ 8,625.00 H&M**  
**\$14,700.00 P&I**

**DEDUCTIBLE \$10,000**  
**\$5,000**

Any provisions required by law to be stated in policies issued by any company subscribing hereto, shall be deemed to have been stated herein. It is further agreed that each of the companies will issue their individual policies in accord with the terms described herein, upon demand by the Assured. In witness whereof, the companies hereinafter named have caused this policy to be issued and signed by a duly authorized officer, attorney, or agent at Newport, Oregon this 23RD day of ~~NOVEMBER~~ *December*, 2003.



POLICY YA-03253  
INSURED BARRY COHEN  
VESSEL "POINT LOMA"  
ENDORSEMENT 12  
EFFECTIVE DECEMBER 23, 2003

IN CONSIDERATION OF PREMIUMS CHARGED, IT IS HEREBY UNDERSTOOD AND AGREED THAT THE EFFECTIVE DATES ON THE "DEC PAGE", ENDORSEMENT 10 AND LINES 21 AND 22 OF THE AMERICAN INSTITUTE HULL CLAUSES ARE CORRECTED TO READ FROM: "DECEMBER 23, 2003, NOON, PACIFIC STANDARD TIME TO DECEMBER 23, 2004, NOON, PACIFIC STANDARD TIME".

BY: \_\_\_\_\_ #PP1893/03  
SUNDERLAND MARINE THRU A.E.S.

BY: \_\_\_\_\_ #03-0269A  
SUNDERLAND MARINE THRU H.M.U.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED  
SK 1/20/04

Acordia of Oregon, Inc.

1231-A SE Bay Boulevard  
P.O. Box 1610  
Newport, OR 97365  
(541) 265-4500 • Fax: (541) 265-4262  
Toll Free Call (800) 451-9850

*Acordia*

**CERTIFICATE OF INSURANCE***American E & S Insurance Brokers  
Seattle*

OP03 2117

RENEWAL OF:  
NEW

THIS IS TO CERTIFY THAT American E & S Insurance Brokers in accordance with authorization granted them have procured insurance as hereinafter from: Underwriters at Lloyd's, London - 100%

ASSURED: Barry Cohen  
C/o Old Point Fisheries  
ADDRESS: P O Box 40,  
Avila Beach, CA 93424

PREMIUM:	\$589.00
POLICY FEE:	\$125.00
<b>TOTAL:</b>	<b>\$714.00</b>

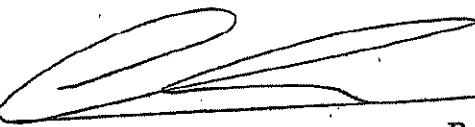
POLICY PERIOD: From: December 23, 2003 To: December 23, 2004  
Both days at 12:00 NOON P.S.T. (Pacific Standard Time)

INTEREST COVERED: AS PER ATTACHED FORMS

1. It is expressly understood and agreed by the Assured by accepting this instrument that American E & S Insurance Brokers is not one of the Insurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Insurer, but the Insurers hereunder are only those whose names are on file as hereinbefore set forth.
2. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. Unless otherwise provided herein, this Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to American E & S Insurance Brokers. This Certificate may also be cancelled, with or without the return or tender of the unearned premium, by Insurers, or by American E & S Insurance Brokers in their behalf by delivering to the Assured or by sending to the Assured by mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days' written notice stating when the cancellation shall be effective, and in such case Insurers shall refund the paid premium less the earned portion thereof on demand, subject always to the retention by Insurers hereon of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Insurers or Assured.
4. This Certificate of Insurance shall not be assigned either in whole or in part, without the written consent of American E & S Insurance Brokers endorsed hereon.
5. This insurance is made and accepted subject to all the provisions, conditions and warranties set forth herein and in any forms or endorsements attached hereto, all of which are to be considered as incorporated herein, and any provisions or conditions appearing in any forms or endorsements attached hereto which alter the Certificate provisions stated above shall supercede such Certificate provisions insofar as they are inconsistent therewith.
6. This document is intended for use as evidence that insurance described herein has been effected against which Insurers' policy(ies) may be issued, and conditions of such policy(ies) when received by the Assured shall supercede conditions of this Certificate. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by American E & S Insurance Brokers

Dated at Seattle, WA this 23rd day of December 2003

By   
American E & S Insurance Brokers

AES-CERT 5/02

COHEN

754

**ACORDIA OF OREGON, INC.**

P.O. Box 1610 \* Newport, Oregon 97365 1-800-451-9850 \* Fax: (541) 265-4262  
1231-A S.E. Bay Boulevard, Newport, Oregon, 97365

**POLICY NO: YA-04242****POLICY OF INSURANCE****(Combined Companies Form)**

In consideration of the premium as hereinafter stated, the various companies named herein, severally but not jointly, do hereby insure the assured named herein, for the amounts and proportions, set opposite their respective names. All subject to the terms and conditions of the forms and endorsements attached herein:

Assured:

~~BARRY COHEN~~ *#10 Point Loma Fishing Co. Inc*  
C/O OLD POINT FISHERIES  
P.O. BOX 40  
AVILA BEACH, CA. 93242 *end #15*

For account of:

**HIMSELF**

Loss, if any, payable to:

**ASSURED OR ORDER**

Total amount insured: (100%)

**\$250,000 H&M/\$1,000,000 P&I**

Interest:

**HULL & MACHINERY / PROTECTION & INDEMNITY**

Vessel(s):

**F/V "POINT LOMA"**

At and From:

**DECEMBER 23, 2004, NOON, LOCAL TIME to**  
**DECEMBER 23, 2005 NOON, LOCAL TIME**

Conditions: (as per form and endorsement attached) SP-38 P&I CLAUSES; P&I FISHING VESSEL CLAUSES; TRIA EXCLUSION; CL 370; CL 380; ASBESTOS EXCLUSION; POLLUTION EXCLUSION; EXCESS COLL. END; SERVICE OF SUIT CLAUSE; FISHING VESSEL CLAUSES; AMERICAN INSTITUTE HULL CLAUSES; CANCELLATION/LIEN CLAUSES; PREMIUM FINANCE END; TRADING WARRANTY/LAY UP WARRANTY; UNITED STATES ECONOMIC AND TRADE SANCTIONS CLAUSE;

Amount Insured Hereunder:

**\$250,000.00 H&M**  
**\$1,000,000.00 P&I**

**RATE: 3.45%****AGREED**

Premium:

**\$8,625.00 H&M**  
**\$14,700.00 P&I**

**Deductible: \$10,000.00**  
**\$5,000.00**

Any provisions required by law to be stated in policies issued by any company subscribing hereto, shall be deemed to have been stated herein. It is further agreed that each of the companies will issue their individual policies in accord with the terms described herein, upon demand by the Assured.

In witness whereof, the companies hereinafter named have caused this policy to be issued and signed by a duly authorized officer, attorney, or agent at Newport, Oregon this 23RD day of DECEMBER 2004.

template:AIHC

Page 20

RENEWAL OF:

OP03 2117

**American E & S Insurance Brokers**  
Seattle

CERTIFICATE NO.

OP04 3127

THIS IS TO CERTIFY THAT American E & S Insurance Brokers in accordance with authorization granted them have procured insurance as hereinafter from: **Underwriters at Lloyd's, London - 100%**

ASSURED: Barry Cohen

C/o Old Point Fisheries

ADDRESS:

P O Box 40,

Avila Beach, CA 93424

PREMIUM:	\$648.00
POLICY FEE:	\$125.00
TOTAL:	\$773.00

POLICY PERIOD: From: December 23, 2004 To: December 23, 2005  
Both days at 12:00 NOON P.S.T. (Pacific Standard Time)

INTEREST COVERED: AS PER ATTACHED FORMS

1. It is expressly understood and agreed by the Assured by accepting this instrument that American E & S Insurance Brokers is not one of the Insurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Insurer, but the Insurers hereunder are only those whose names are on file as hereinbefore set forth.
2. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. Unless otherwise provided herein, this Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to American E & S Insurance Brokers. This Certificate may also be cancelled, with or without the return or tender of the unearned premium, by Insurers, or by American E & S Insurance Brokers in their behalf by delivering to the Assured or by sending to the Assured by mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days' written notice stating when the cancellation shall be effective, and in such case Insurers shall refund the paid premium less the earned portion thereof on demand, subject always to the retention by Insurers hereon of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Insurers or Assured.  
  
This Certificate of Insurance shall not be assigned either in whole or in part, without the written consent of American E & S Insurance Brokers endorsed hereon.
4. This insurance is made and accepted subject to all the provisions, conditions and warranties set forth herein and in any forms or endorsements attached hereto, all of which are to be considered as incorporated herein, and any provisions or conditions appearing in any forms or endorsements attached hereto which alter the Certificate provisions
5. stated above shall supercede such Certificate provisions insofar as they are inconsistent therewith.
6. This document is intended for use as evidence that insurance described herein has been effected against which Insurers' policy(ies) may be issued, and conditions of such policy(ies) when received by the Assured shall supercede conditions of this Certificate. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by American E &amp; S Insurance Brokers

Dated at Seattle, WA this December 8, 2004

AES-CERT 5/02

By 

American E &amp; S Insurance Brokers

**Acordia of Oregon, Inc.**

P.O. Box 1610 \* Newport, Oregon 97365 \* 1-800-451-9850 \* Fax (541) 265-4262  
1213-A S.E. Bay Boulevard, Newport, Oregon 97365

**POLICY NO. YA-05252****POLICY OF INSURANCE**

(Combined Companies Form)

In consideration of the premium as hereinafter stated, the various companies named herein, severally but not jointly, do hereby insure the assured named herein, for the amounts and proportions, set opposite their respective names. All subject to the terms and conditions of the forms and endorsements attached herein:

**Assured:** F/V POINT LOMA FISHING CO., INC.  
C/O OLD POINT FISHERIES  
P.O. BOX 40  
AVILA BEACH, CA. 93242

**For account of:** THEMSELVES

**Loss, if any, payable to:** ASSURED OR ORDER

**Total amount insured: (100%)** \$250,000 H&M/\$1,000,000 P&I

**Interest:** HULL & MACHINERY AND PROTECTION & INDEMNITY

**Vessel(s):** "POINT LOMA"

**At and From:** DECEMBER 23, 2005 Noon, Local Time to  
DECEMBER 23, 2006, Noon, Local Time

Conditions: (as per form and endorsement attached) ~~TRADING & LAY UP~~  
~~WARRANTY; FISHING VESSEL CLAUSES; BROKERS &/OR AGENTS CANCELLATION~~  
~~CLAUSE; SERVICE OF SUIT CLAUSE; LIEN CLAUSE; CL 380; CL 370; ASBESTOS~~  
~~EXCLUSION; TRIA EXCLUSION; POLLUTION EXCLUSION CLAUSE; AMERICAN~~  
~~INSTITUTE HULL CLAUSES; P&I FISHING VESSEL CLAUSES; SP 38 P&I CLAUSES;~~  
~~EXCESS COLLISION END; PREMIUM FINANCE END; U.S. ECONOMIC & TRADE~~  
~~SANCTIONS CLAUSE.~~

**Amount Insured Hereunder:** \$250,000.00 H&M **RATE:** 3.45 %  
\$1,000,000.00 P&I **AGREED**

**PREMIUM** \$8,625.00 H&M **DEDUCTIBLE:** \$10,000  
\$14,700.00 P&I \$5,000

Any provisions required by law to be stated in policies issued by any company subscribing hereto, shall be deemed to have been stated herein. It is further agreed that each of the companies will issue their individual policies in accord with the terms described herein, upon demand by the Assured.

In witness whereof, the companies hereinafter named have caused this policy to be issued and signed by a duly authorized officer, attorney, or agent at Newport, Oregon this 23RD day of DECEMBER, 2005.



04 3127

Salvus Bain Management (USA) LLC

Seattle

OP05 4146

THIS IS TO CERTIFY THAT Salvus Bain Management (USA) LLC in accordance with authorization granted  
have procured insurance as hereinafter from: Underwriters at Lloyd's, London - 100%

INSURED: F/v Point Loma Fishing Company, Inc.

ADDRESS:

P O Box 40,  
Avila Beach, Ca 93424

PREMIUM:	\$648.00
POLICY FEE:	\$125.00
<b>TOTAL:</b>	<b>\$773.00</b>

POLICY PERIOD: From: December 23, 2005 To: December 23, 2006  
Both days at 12:00 NOON P.S.T. (Pacific Standard Time)

INTEREST COVERED: AS PER ATTACHED FORMS

1. It is expressly understood and agreed by the Assured by accepting this instrument that Salvus Bain Management (USA) LLC in not one of the Insurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Insurer, but the Insurers hereunder are only those whose names are on file as hereinbefore set forth.
2. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. Unless otherwise provided herein, this Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to Salvus Bain Management (USA) LLC. This Certificate may also be cancelled, with or without the return or tender of the unearned premium, by Insurers, or by Salvus Bain Management (USA) LLC in their behalf by delivering to the Assured or by sending to the Assured by mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days' written notice stating when the cancellation shall be effective, and in such case Insurers shall refund the paid premium less the earned portion thereof on demand, subject always to the retention by Insurers hereon of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Insurers or Assured.
4. This Certificate of Insurance shall not be assigned either in whole or in part, without the written consent of Salvus Bain Management (USA) LLC endorsed hereon.
5. This insurance is made and accepted subject to all the provisions, conditions and warranties set forth herein and in any forms or endorsements attached hereto, all of which are to be considered as incorporated herein, and any provisions or conditions appearing in any forms or endorsements attached hereto which alter the Certificate provisions stated above shall supercede such Certificate provisions insofar as they are inconsistent therewith.
6. This document is intended for use as evidence that insurance described herein has been effected against which Insurers' policy(ies) may be issued, and conditions of such policy(ies) when received by the Assured shall supercede conditions of this Certificate. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by Salvus Bain Management (USA) LLC

dated at Seattle, WA this December 8, 2005

By

Salvus Bain Management (USA) LLC

ES-CERT 5/02

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO 4617  
CONNECTION TEL 14152766599  
CONNECTION ID  
ST. TIME 08/21 08:40  
USAGE T 02'04  
PGS. SENT 3  
RESULT OK

WELLS  
FARGO

Wells Fargo Insurance Services of Oregon, Inc.

## Fax Transmittal Sheet

1231-A SE Bay Boulevard  
P.O. Box 1610  
Newport, OR 97365  
541.265.4500 / 800.451.9850  
541.265.4262 Fax

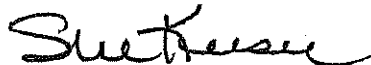
To:	BUD WALSH	From:	SUE KEESEE
Date:	August 21, 2007	Time:	8:31 AM
Location:		RE:	F/V POINT LOMA FISHING CO. INC F/V "POINT LOMA"
Fax Number:	415 276 6599	Number of Pages:	3 (Including Cover Page)

Comments: DEAR MR. WALSH:

TO FOLLOW ARE COPIES OF THE DEC SHEETS FOR THE INSURANCE ON THE FV  
"POINT LOMA". THE ACCOUNT IS PAID IN FULL.

PLEASE LET ME KNOW IF YOU NEED ANYTHING MORE.

SINCERELY,



SUE KEESEE



**Acordia of Oregon, Inc.**

P.O. Box 1610 \* Newport, Oregon 97365 \* 1-800-451-9850 \* Fax (541) 265-4262  
1213-A S.E. Bay Boulevard, Newport, Oregon 97365

**POLICY NO. YA-06260****POLICY OF INSURANCE**

(Combined Companies Form)

In consideration of the premium as hereinafter stated, the various companies named herein, severally but not jointly, do hereby insure the assured named herein, for the amounts and proportions, set opposite their respective names. All subject to the terms and conditions of the forms and endorsements attached herein:

**Assured:**

F/V POINT LOMA FISHING CO., INC.  
C/O OLD POINT FISHERIES  
P.O. BOX 40  
AVILA BEACH, CA. 93242

**For account of:****THEMSELVES****Loss, if any, payable to:****ASSURED OR ORDER****Total amount insured: (100%)****\$250,000 H&M/\$1,000,000 P&I****Interest:****HULL & MACHINERY AND PROTECTION & INDEMNITY****Vessel(s):****"POINT LOMA"****At and From:**

**DECEMBER 23, 2006 Noon, Local Time to**  
**DECEMBER 23, 2007, Noon, Local Time**

Conditions: (as per form and endorsement attached) TRADING & LAY UP  
WARRANTY; FISHING VESSEL CLAUSES; BROKERS &/OR AGENTS CANCELLATION  
CLAUSE; SERVICE OF SUIT CLAUSE; LIEN CLAUSE; CL 380; CL 370; ASBESTOS  
EXCLUSION; TRIA EXCLUSION; POLLUTION EXCLUSION CLAUSE; AMERICAN  
INSTITUTE HULL CLAUSES; P&I FISHING VESSEL CLAUSES; SP-38 P&I  
CLAUSES; U.S. ECONOMIC & TRADE SANCTIONS CLAUSE; EXCESS COLLISION  
END; PREMIUM FINANCE END.

**Amount Insured Hereunder:**

**\$250,000.00 H&M**  
**\$1,000,000.00 P&I**

**RATE: 3.45%**  
**AGREED**

**PREMIUM**

**\$8,625.00 H&M**  
**\$15,900.00 P&I**

**DEDUCTIBLE: \$10,000 H&M**  
**\$5,000 P&I**

Any provisions required by law to be stated in policies issued by any company subscribing hereto, shall be deemed to have been stated herein. It is further agreed that each of the companies will issue their individual policies in accord with the terms described herein, upon demand by the Assured.

In witness whereof, the companies hereinafter named have caused this policy to be issued and signed by a duly authorized officer, attorney, or agent at Newport, Oregon this 23RD day of DECEMBER, 2006.

# CERTIFICATE OF INSURANCE

RENEWAL OF:  
OP05 4146

Salvus Bain Management (USA) LLC  
Seattle

CERTIFICATE NO.  
OP06 5158

THIS IS TO CERTIFY THAT Salvus Bain Management (USA) LLC in accordance with authorization granted them have procured insurance as hereinafter from:  
Underwriters at Lloyd's, London - 100%

ASSURED: F/V Point Loma Fishing Company, Inc.  
c/o Old Point Fisheries

ADDRESS: P O Box 40,  
Avila Beach, CA 93424

PREMIUM:	\$646.00
POLICY FEE:	\$125.00
TOTAL:	<u>\$771.00</u>

POLICY PERIOD: From: December 23, 2006 To: December 23, 2007  
Both days at 12:00 NOON P.S.T. (Pacific Standard Time)

## INTEREST COVERED: AS PER ATTACHED FORMS

1. It is expressly understood and agreed by the Assured by accepting this instrument that Salvus Bain Management (USA) LLC in not one of the Insurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Insurer, but the Insurers hereunder are only those whose names are on file as hereinbefore set forth.
2. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. Unless otherwise provided herein, this Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to Salvus Bain Management (USA) LLC. This Certificate may also be cancelled, with or without the return or tender of the unearned premium, by Insurers, or by Salvus Bain Management (USA) LLC in their behalf by delivering to the Assured or by sending to the Assured by mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days' written notice stating when the cancellation shall be effective, and in such case Insurers shall refund the paid premium less the earned portion thereof on demand, subject always to the retention by Insurers hereon of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Insurers or Assured.
4. This Certificate of Insurance shall not be assigned either in whole or in part, without the written consent of Salvus Bain Management (USA) LLC endorsed hereon.
5. This insurance is made and accepted subject to all the provisions, conditions and warranties set forth herein and in any forms or endorsements attached hereto, all of which are to be considered as incorporated herein, and any provisions or conditions appearing in any forms or endorsements attached hereto which alter the Certificate provisions stated above shall supercede such Certificate provisions insofar as they are inconsistent therewith.
6. This document is intended for use as evidence that insurance described herein has been effected against which Insurers' policy(ies) may be issued, and conditions of such policy(ies) when received by the Assured shall supercede conditions of this Certificate. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by Salvus Bain Management (USA) LLC

Dated at Seattle, WA this December 13, 2006

AES-CERT 5/02

By

Salvus Bain Management (USA) LLC

**COPY**

COHEN  
761

*Wells Fargo Insurance Services of Oregon, Inc.*  
P.O. Box 1610 \* Newport, Oregon 97365 \* 1-800-451-9850 \* Fax (541) 265-4262  
1213-A S.E. Bay Boulevard, Newport, Oregon 97365

POLICY NO. YA-07264

# POLICY OF INSURANCE

(Combined Companies Form)

In consideration of the premium as hereinafter stated, the various companies named herein, severally but not jointly, do hereby insure the assured named herein, for the amounts and proportions, set opposite their respective names. All subject to the terms and conditions of the forms and endorsements attached herein:

**Assured:**

F/V POINT LOMA FISHING CO., INC.  
C/O OLD POINT FISHERIES  
P.O. BOX 40  
AVILA BEACH, CA. 93242

**For account of:**

THEMSELVES

**Loss, if any, payable to:**

ASSURED OR ORDER

**Total amount insured: (100%)**

\$250,000 H&M/\$1,000,000 P&I

**Interest:**

HULL & MACHINERY AND PROTECTION & INDEMNITY

**Vessel(s):**

"POINT LOMA"

**At and From:**

DECEMBER 23, 2007 Noon, Local Time to  
DECEMBER 23, 2008, Noon, Local Time

Conditions: (as per form and endorsement attached) TRADING & LAY UP  
WARRANTY; FISHING VESSEL CLAUSES; BROKERS &/OR AGENTS CANCELLATION  
CLAUSE; SERVICE OF SUIT CLAUSE; LIEN CLAUSE; CL 380; CL 370; ASBESTOS  
EXCLUSION; TRIA EXCLUSION; POLLUTION EXCLUSION CLAUSE; AMERICAN  
INSTITUTE HULL CLAUSES; P&I FISHING VESSEL CLAUSES; SP-38 P&I  
CLAUSES; U.S. ECONOMIC & TRADE SANCTIONS CLAUSE; EXCESS COLLISION  
END; PREMIUM FINANCE END.

**Amount Insured Hereunder:**

\$250,000.00 H&M  
\$1,000,000.00 P&I

RATE: 3.45%  
AGREED

**PREMIUM**

\$8,625.00 H&M  
\$15,900.00 P&I

DEDUCTIBLE: \$10,000 H&M  
\$5,000 P&I

Any provisions required by law to be stated in policies issued by any company subscribing hereto, shall be deemed to have been stated herein. It is further agreed that each of the companies will issue their individual policies in accord with the terms described herein, upon demand by the Assured.

In witness whereof, the companies hereinafter named have caused this policy to be issued and signed by a duly authorized officer, attorney, or agent at Newport, Oregon this 23RD day of DECEMBER, 2007.

**CERTIFICATE OF INSURANCE**RENEWAL OF:  
OP06 5158Salvus Bain Management (USA) LLC  
Seattle

OP07 6159

THIS IS TO CERTIFY THAT Salvus Bain Management (USA) LLC in accordance with authorization granted them have procured insurance as hereinafter from: **Underwriters at Lloyd's, London - 100%**

ASSURED: F/V Point Loma Fishing Company, Inc.  
c/o Old Point Fisheries

ADDRESS: Po Box 40  
Avila Beach, CA 93242

PREMIUM:	\$775.00
POLICY FEE:	\$125.00
<b>TOTAL:</b>	<b>\$900.00</b>

POLICY PERIOD: From: December 23, 2007 To: December 23, 2008  
Both days at 12:00 NOON P.S.T. (Pacific Standard Time)

**INTEREST COVERED: AS PER ATTACHED FORMS**

1. It is expressly understood and agreed by the Assured by accepting this instrument that Salvus Bain Management (USA) LLC is not one of the Insurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Insurer, but the Insurers hereunder are only those whose names are on file as hereinbefore set forth.
2. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. Unless otherwise provided herein, this Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to Salvus Bain Management (USA) LLC. This Certificate may also be cancelled, with or without the return or tender of the unearned premium, by Insurers, or by Salvus Bain Management (USA) LLC in their behalf by delivering to the Assured or by sending to the Assured by mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days' written notice stating when the cancellation shall be effective, and in such case Insurers shall refund the paid premium less the earned portion thereof on demand, subject always to the retention by Insurers hereon of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Insurers or Assured.
4. This Certificate of Insurance shall not be assigned either in whole or in part, without the written consent of Salvus Bain Management (USA) LLC endorsed hereon.
5. This insurance is made and accepted subject to all the provisions, conditions and warranties set forth herein and in any forms or endorsements attached hereto, all of which are to be considered as incorporated herein, and any provisions or conditions appearing in any forms or endorsements attached hereto which alter the Certificate provisions stated above shall supercede such Certificate provisions insofar as they are inconsistent therewith.
6. This document is intended for use as evidence that insurance described herein has been effected against which Insurers' policy(ies) may be issued, and conditions of such policy(ies) when received by the Assured shall supercede conditions of this Certificate. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by Salvus Bain Management (USA) LLC

Dated at Seattle, WA this December 10, 2007

By 

Salvus Bain Management (USA) LLC

AES-CERT 5/02

# Exhibit 19



Joe,

Please credit my account. With this payment, if your analysis was correct, the new balance should be \$139,749.79.

I will try to send you at least \$2,000/month, sometimes \$3,000.

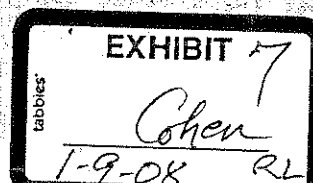
I'm sick right now and if I try to talk I start coughing, so instead, you get this note.

I'm still unemployed, but this gives me a chance to help Michael make Olde Port better.

I hope things are going good for you and your family. Please give Yvonne my regards. Too bad our families never got the chance to become better friends. Oh, well, things usually happen for a reason. Well, take care of yourself.

Barry

Tuesday, January 30, 2007 America Online: FishmanCohen



DMSI 0078

# Exhibit 20



James P. Walsh, CSB. No. 184620  
 Gwen Fanger, CSB No. 191161  
 DAVIS WRIGHT TREMAINE LLP  
 505 Montgomery Street, Suite 800  
 San Francisco, California 94111-3611  
 Telephone: (415) 276-6500  
 Facsimile: (415) 276-6599  
 budwalsh@dwt.com

Attorneys for Defendants and Claimant  
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**ANSWER TO VERIFIED  
 ADMIRALTY AND MARITIME  
 COMPLAINT (In Personam and In  
 Rem); VERIFIED COUNTERCLAIM**

BARRY COHEN and CHRIS COHEN (aka CHRISTENE COHEN), sued *in personam*, the F/V  
 POINT LOMA, sued *in rem*, and the F/V POINT LOMA FISHING COMPANY, INC., as Claimant  
 (hereinafter "Defendants"), hereby Answer the Verified Admiralty and Maritime Complaint of DEL  
 MAR SEAFOODS, INC. (hereinafter "Plaintiff") and allege their Verified Counterclaim, as follows:

**ANSWER TO COMPLAINT**

1. Paragraph 1 of the Complaint describes the action and contains legal conclusions to  
 which no response is required.

2. Paragraph 2 of the Complaint contains legal conclusions to which no response is

1 required.

2 3. Defendants aver that CHRIS COHEN resides in Scottsdale, Arizona. Defendants admit  
3 the remaining allegations in Paragraph 3 of the Complaint.

4 4. Defendants lack sufficient information to form a belief as to the allegations in Paragraph  
5 4 of the Complaint, and therefore deny them.

6 5. Defendants admit the allegations in Paragraph 5 of the Complaint.

7 6. Defendants deny the allegations in Paragraph 6 of the Complaint.

8 7. Defendants admit that, at the time the Promissory Note and Ship Mortgage were signed  
9 in 2003, Defendants BARRY COHEN and CHRIS COHEN were the owners of the F/V POINT  
10 LOMA. The ownership of the F/V POINT LOMA has since been transferred to the F/V POINT  
11 LOMA FISHING COMPANY, INC., subject to the Ship Mortgage. Defendants deny all other  
12 allegations in Paragraph 7 of the Complaint.

13 8. No response to Paragraph 8 of the Complaint is required.

14 9. Defendants admit the allegations in Paragraph 9 of the Complaint.

15 10. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants  
16 deny all other allegations in Paragraph 10 of the Complaint.

17 11. Defendants admit the allegations in Paragraph 11 of the Complaint.

18 12. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants  
19 deny all other allegations in Paragraph 12 of the Complaint.

20 13. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants  
21 deny all other allegations in Paragraph 13 of the Complaint.

22 14. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants  
23 deny all other allegations in Paragraph 14 of the Complaint.

24 15. Defendants deny the allegations in Paragraph 15 of the Complaint. Defendants aver that  
25 they have paid \$188,000 on the note, including an advance payment of \$175,000 made at the request of  
26 Plaintiff on November 10, 2005.

27 16. Defendants deny the allegations in Paragraph 16 of the Complaint. Defendants aver that  
28 there is no default on the terms of the Promissory Note because of the advance payment of \$175,000 in

1 2005 and additional payments of \$13,000, which covers the required \$3,000 monthly payments under  
2 the Promissory Note through at least February 2009.

3 17. Defendants admit the allegations in Paragraph 17 of the Complaint.

4 18. No response to Paragraph 18 of the Complaint is required.

5 19. Defendants admit the allegations in Paragraph 19 of the Complaint.

6 20. Defendants deny the allegations in Paragraph 20 of the Complaint.

7 21. Defendants deny the allegations in Paragraph 21 of the Complaint.

8 22. Defendants deny the allegations in Paragraph 22 of the Complaint.

9 23. Defendants admit that Plaintiff has a maritime lien on the F/V POINT LOMA but deny  
10 that Plaintiff has any right to foreclose that lien because Defendants are not in default under the  
11 Promissory Note due to the advance payment of \$188,000. Defendants deny that any fishing permit or  
12 fishing history is subject to such lien because fishing permits and fishing history are intangibles and  
13 must be specifically listed in the Promissory Note and Ship Mortgage in order to be subject to a  
14 maritime lien. Defendants deny all other allegations in Paragraph 23 of the Complaint.

15 24. Defendants deny that Plaintiff is entitled to attorneys fees and costs because Defendants  
16 are not in default under the Promissory Note. Defendants aver that Plaintiff owes Defendants attorneys  
17 fees and costs under the Promissory Note for seizing the F/V POINT LOMA without legal cause.

18 25. No response to Paragraph 25 of the Complaint is required.

19 26. Defendants admit that Plaintiff has a maritime lien on the F/V POINT LOMA but deny  
20 that Plaintiff has any right to foreclose that lien because Defendants are not in default under the  
21 Promissory Note due to the advance payment of \$188,000. Defendants deny that any fishing permit or  
22 fishing history is subject to such lien because fishing permits and fishing history are intangibles and  
23 must be specifically listed in the Promissory Note and Ship Mortgage in order to be subject to a  
24 maritime lien. Defendants deny all other allegations in Paragraph 26 of the Complaint.

25 27. Defendants deny the allegations in Paragraph 27 of the Complaint.

26 28. The remainder of the Complaint contains a prayer for relief. Defendants deny that  
27 Plaintiff is entitled to any relief.

28 29. Defendants deny each and every allegation in the Complaint, whether express or implied,

1 that Defendants have not previously or expressly admitted in this Answer.

2 **AFFIRMATIVE DEFENSES**

3 30. Plaintiff has failed to state a claim for which relief may be granted.

4 31. The Court lacks subject matter jurisdiction over Plaintiff's claim.

5 32. Plaintiff lacks standing to bring its claim.

6 33. Plaintiff's claims are barred by estoppel.

7 34. Plaintiff's claims are barred by accord and satisfaction.

8 35. Plaintiff has consented to the acts of Defendants complained of in the Complaint.

9 36. Plaintiff does not come into Court with clean hands.

10 37. Plaintiff has failed to obtain affirmative consent to make any alleged advances under the  
11 Promissory Note for debts completely unrelated to the operation and use of the F/V POINT LOMA.

12 38. Plaintiff has failed to document in writing any alleged advances under the Promissory  
13 Note.

14 **COUNTERCLAIM**

15 For their Counterclaim against Plaintiff, Defendants allege as follows:

16 39. The arrest of the F/V POINT LOMA by Plaintiff was wrongful in that (a) Plaintiff has  
17 refused, without cause, to admit that Defendants have paid \$188,000 on the Promissory Note, including  
18 an advance payment of \$175,000; (b) Defendants were therefore not in default under the Promissory  
19 Note; (c) Plaintiff improperly alleges that the total amount of the loan was greater than \$215,000  
20 because of advances under the Promissory Note that Defendants never agreed were subject to the  
21 Promissory Note and Ship Mortgage; and (d) none of these relevant, material facts were disclosed to  
22 the Court when Plaintiff sought the arrest warrant in this case.

23 40. Because Defendants paid in November 2005 an amount equivalent to 37 monthly  
24 payments in advance, Defendants are not in default and the arrest of the vessel is in breach of the  
25 Promissory Note and the Ship Mortgage.

26 41. The wrongful arrest of the F/V POINT LOMA has disrupted the fishing activities of the  
27 Vessel and prevents it from earning income for the benefit of Defendants, including as a source of  
28 income to pay off the remaining amount due to Plaintiff under the Promissory Note. Plaintiff has

1 therefore intentionally and/or negligently interfered with Defendants prospective economic advantage.

2 42. In taking the action it did, Plaintiff has breached the implied Covenant of Good Faith and  
3 Fair Dealing incorporated into the Promissory Note and Ship Mortgage.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, Defendants respectfully request that the Court:

6 a. Enter an order quashing the arrest of the F/V POINT LOMA as wrongful and not  
7 authorized under the terms of the Promissory Note and Ship Mortgage;

8 b. Enter an order finding Plaintiff in breach of the Promissory Note and the Ship  
9 Mortgage;

10 c. Enter an order finding that Plaintiff has intentionally and/or negligently interfered  
11 with the prospective economic advantage of Defendants;

12 d. Enter an order awarding Defendants damages for wrongful or improper arrest, for  
13 breach of the Promissory Note and Ship Mortgage, and for intentional and/or negligent interference  
14 with Defendants' prospective economic advantage;

15 e. Enter an order awarding Defendants their attorney's fees and costs; and

16 f. Grant Defendants such further relief as may be appropriate and fair.

17 DATED this 25th day of June, 2007.

18 Respectfully submitted,

19  
20 /s/ James P. Walsh

21 James P. Walsh (CSB No. 184620)  
22 Gwen Fanger (CSB No. 191161)  
23 DAVIS WRIGHT TREMAINE LLP  
24 505 Montgomery Street, Suite 800  
25 San Francisco, CA 94111-3834  
26 Telephone: (415) 276-6556  
27 Facsimile: (415) 276-6599

28 Attorneys for Defendants

10v 14 05 04:01p  
06-25-07 12:40pm

Case 3:07-cv-02952-WHA Document 28 Filed 06/25/2007 Page 6 of 8

## VERIFICATION

1  
2  
3 I, Barry Cohen, hereby state the follows:

4 1. I am a resident of the State of California and a defendant in this case and an  
5 officer in F/V POINT LOMA Fishing Company, Inc., a company organized under the laws of the State  
6 of California.

7 2. I have read the above Answer to Admiralty and Maritime Complaint and Verified  
8 Counterclaim and hereby verify the facts set forth therein to the best of my knowledge and belief.

9 3. I am authorized on behalf of all Defendants to verify the Counterclaim to  
10 Plaintiff's Complaint.

11 I declare under the penalty of perjury under the laws of the State of California and the United  
12 States that the foregoing is true and correct and that this verification was entered into at Avila Beach,  
13 California.

14  
15 Dated this 25 day of June, 2007.

16  
17 BY:   
18 Barry Cohen  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. C-07-2952-WHA ANSWER/COUNTERCLAIMS 6  
SFO 363973v1 DON4289-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
605 Montgomery Street, Suite 800  
San Francisco, California 94111-3611  
(415) 776-6300 • Fax: (415) 776-6599

# Exhibit 21



---

Deposition of CHRISTENE COHEN January 11, 2008

DEL MAR SEAFOODS v COHEN

Page 1 to Page 67

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FOR:  
GWEN L. FANGER, ESQUIRE

CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

NICHOLS CERTIFIED COURT REPORTERS  
2607 N. Hayden Road, Scottsdale, AZ 85257  
110 West "C" Street, Suite 1300, San Diego, CA 92101

Phone: 1-800-227-0577  
FAX: 1-480-990-7955

**DISK  
ENCLOSED**

## Page 5

1 Scottsdale, Arizona  
2 Friday, January 11, 2008  
3 10:00 a.m.  
4  
5 CHRISTENE COHEN,  
6 a witness herein, after having been first duly sworn,  
7 testified as follows:  
8 \*\*\*  
9  
10 EXAMINATION  
11 BY MR. POULOS:  
12 Q. Good morning, Ms. Cohen. Could you state your  
13 full name for the record.  
14 A. Christene, spelled e-n-e. Christene Layne,  
15 L-a-y-n-e, Cohen, C-o-h-e-n.  
16 Q. Ms. Cohen, have you ever had your deposition  
17 taken before?  
18 A. No.  
19 Q. You're currently separated from your husband,  
20 Barry Cohen; is that right?  
21 A. Yes.  
22 Q. And how long have you been separated?  
23 A. Since December 28th of '07.  
24 Q. When did you file for divorce?  
25 A. The exact date, I'm not -- I don't know.

## Page 6

1 Q. What's your best estimate?  
2 A. Maybe that same day.  
3 Q. Let me tell you some of the ground rules for a  
4 deposition so you kind of understand what we're doing here;  
5 okay? The main thing that you need to know is that the oath  
6 that you've taken is the same oath that you take if you're  
7 testifying in court.  
8 A. Correct.  
9 Q. So the same obligation, tell the truth, the whole  
10 truth, nothing but the truth. The whole thing you've heard  
11 on television before, it's the same, even though we're  
12 sitting in a court reporter's office; okay?  
13 A. Uh-huh.  
14 Q. Is that yes?  
15 A. Yes.  
16 Q. Rule No. 2, we need verbal, audible responses.  
17 Uh-huh or nods of the head, the problem is, they require the  
18 court reporter to actually interpret whether you're shaking  
19 your head up or down or sideways or what uh-huh means,  
20 whether it's yes or no, so it's important for you to give us  
21 verbal, audible responses; okay?  
22 A. Okay.  
23 Q. Everything that you say is going to be taken down  
24 by the court reporter, and at the end of the deposition,  
25 some time in the next few weeks, you'll be given a

## Page 7

1 transcript of the deposition and you'll have a chance to  
2 read it and make any changes to the deposition if they're  
3 necessary to correct your answers; okay?  
4 A. Okay.  
5 Q. Easy process. She'll either give you an errata  
6 sheet to write it down, or you can write it down, cross  
7 something out, write in the correct answer above it, initial  
8 it.  
9 I want to caution you, you're always welcome to  
10 change your answers. You can't change my questions, but if  
11 you do change your answers in a significant way, I or your  
12 own counsel in this case could comment on those, and it  
13 might affect how the judge views your testimony at trial.  
14 So it's important for us to get your best testimony today;  
15 okay?  
16 A. Okay.  
17 Q. To that end, if we're going through the testimony  
18 today and you need to go back and change something, that's  
19 perfectly fine for you to do that. Just tell me, wait a  
20 minute; this reminds me of something else I said earlier; I  
21 want to change that or I want to revisit that issue. It's  
22 perfectly fine to do that.  
23 In some respects, this is more of a conversation  
24 than just a question/answer session; okay?  
25 A. Okay.

## Page 8

1 Q. As a conversation, if you don't understand my  
2 questions, just tell me that. I'm happy to work with you.  
3 I want to make sure that you understand what I'm asking you  
4 before you provide an answer; okay?  
5 A. Okay.  
6 Q. If you need to take a break at any time, you're  
7 more than welcome to do that. Again, just let me know;  
8 okay?  
9 A. Okay.  
10 Q. Is there any reason that you know of, whether  
11 you're on medication or something that might affect your  
12 ability to recall events, or you're not feeling well; is  
13 there any reason why you can't give your best testimony  
14 today?  
15 A. No.  
16 Q. You're aware we're here because of a lawsuit  
17 filed by Del Mar Seafoods against yourself and Barry Cohen;  
18 is that right?  
19 A. Yes.  
20 Q. When did you first learn of that lawsuit?  
21 A. When my attorney was served.  
22 Q. Which attorney are you talking about?  
23 A. That would be Dennis Caspe, my divorce attorney,  
24 when he was notified.  
25 Q. Do you recall when that was?

## Page 45

1 A. No.  
 2 Q. This is a bad copy, but it was the one that was  
 3 attached to the Initial Disclosures. I'm showing you  
 4 Exhibit-4, and a document with Bates numbers Cohen00009.  
 5 Have you ever seen that document before?  
 6 A. No.  
 7 Q. Have you ever discussed with Barry a schedule of  
 8 payments that he was given by Joe Riggio?  
 9 A. No.  
 10 Q. How well do you know Joe Riggio? You worked --  
 11 A. Pretty well. I like him a lot.  
 12 Q. Do you think -- do you have any reason to believe  
 13 that Joe Riggio has any malice or ill-will towards you?  
 14 A. No.  
 15 Q. Do you have any reason to believe that he has any  
 16 malice or ill-will towards Barry?  
 17 A. I don't know.  
 18 Q. Do you think he -- from your knowledge and  
 19 experience working with him, do you think he's an honest  
 20 guy?  
 21 A. Pretty much.  
 22 Q. That's a little equivocal.  
 23 Do you have any reason to believe he would be  
 24 dishonest in any of his representations in this case?  
 25 A. I don't know.

## Page 46

1 Q. Do you have any reason to believe that?  
 2 A. I don't know.  
 3 Q. As you sit here today, can you think of any  
 4 occasion where he's been dishonest with you?  
 5 A. No.  
 6 Q. Let me show you a better copy of that schedule of  
 7 payments. I found one. The one I'm going to show you was  
 8 marked as an exhibit to Barry's deposition in the Avila  
 9 Beach litigation.  
 10 (Exhibit-6 was marked.)  
 11 That's, I believe, just a better copy of that  
 12 schedule of payments.  
 13 Does that help you in terms of whether you've  
 14 ever seen that before?  
 15 A. No.  
 16 Q. You still have never seen it?  
 17 A. I have never seen it.  
 18 Q. In your employment with Old Port Fisheries/Del  
 19 Mar, you were not the person responsible for keeping track  
 20 of the debts of Michael or Leonard to that entity, were you?  
 21 A. No.  
 22 Q. Who was?  
 23 A. I don't know.  
 24 Q. Does the name -- I think it's Harriett Shields?  
 25 A. The bookkeeper was Harriett Shields and Dean

## Page 47

1 Smith.  
 2 Q. Okay. Do you know if they were the people who  
 3 would track those?  
 4 A. Yes.  
 5 (Exhibit-7 was marked.)  
 6 Q. Have you ever seen Exhibit-7 before?  
 7 A. No.  
 8 Q. How well do you know Joe Cappuccio?  
 9 A. Pretty well.  
 10 Q. All right. Do you have any reason to believe  
 11 that Joe Cappuccio has any malice or ill-will toward you or  
 12 Barry?  
 13 A. Not towards me, but I'm sure with Barry.  
 14 Q. And why are you sure with Barry?  
 15 A. They're in a lawsuit.  
 16 Q. Okay. Other than the fact that they're in a  
 17 lawsuit. I mean, he never made any statements to you --  
 18 A. No.  
 19 Q. -- that he was angry at Barry or --  
 20 A. Never.  
 21 Q. Okay. And he had never done anything to you that  
 22 made you think that he was not -- that he had some personal  
 23 reason to try to cause any harm to you or Barry?  
 24 A. Not to me.  
 25 Q. Anything with respect to Barry other than this

## Page 48

1 lawsuit?  
 2 A. Nothing comes to mind.  
 3 Q. Did you feel you were treated fairly as an  
 4 employee?  
 5 A. Yes.  
 6 Q. Are you aware of any claim being filed on your  
 7 behalf with the United States Marshal Service arising from  
 8 the loss of that fishing net?  
 9 A. No.  
 10 Q. How much was the net worth?  
 11 A. They're usually around \$30,000.00 a net.  
 12 Q. Do you know what size net this was?  
 13 A. No.  
 14 Q. Do you know when it had been purchased?  
 15 A. No.  
 16 Q. Looking at Exhibit-6 or 7, did Barry ever discuss  
 17 with you the addition of amounts beyond the \$215,000.00 to  
 18 the promissory note?  
 19 A. No.  
 20 Q. Where did you get the \$175,000.00 that was used  
 21 to make the payment on the note?  
 22 A. A second mortgage on our house.  
 23 Q. Was that mortgage taken out solely for that  
 24 purpose, or was it for some other purposes?  
 25 A. It was taken out for that purpose, and also -- I

# Exhibit 22

00168

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

3

4

5 BARRY A. COHEN; LEONARD A. COHEN,

6 OLDE PORT INN, INC. and OLDE PORT

7 FISHERIES, INC.,

8 Plaintiffs,

9 vs. Case No. CV 040897

10 PORT SAN LUIS HARBOR DISTRICT; and

11 DOES 1 to 50, inclusive,

12 Defendants.

13

14

15

DEPOSITION OF JOSEPH ROGGIO

16

VOLUME 2/PAGE 168 - 364

17

Tuesday, November 29, 2005, 10:10 a.m.

18

19

20

LOCATION:

21 OFFICES OF MONTEREY PENINSULA COURT REPORTERS

2801 Monterey-Salinas Highway, Suite E

22 Monterey, California

23

24

REPORTED BY:

25 LISA A. YORK MEESKE, CSR 10617

00197

1 A. Just -- just curious.

2 Q. Why was it you were curious?

3 A. I mean, I don't know if there was a

4 specific reason. But sometimes I -- you know, one thing

5 that I always liked the bookkeeper down there to provide

6 were the -- you know, I wasn't involved in the day-to-day

7 operations. So the only thing that, obviously, made Joe

8 comfortable was being able to provide backups to the

9 balance sheet numbers.

10 Q. Was Joe Cappuccio getting concerned during

11 the last quarter of 2003 about the amount of money he was

12 losing through the operation in Avila?

13 MR. SPEIR: Objection; calls for speculation.

14 THE WITNESS: Yeah. I don't know that. These

15 advances have nothing to do with that, though.

16 BY MR. MOROSKI:

17 Q. But they were reflected in the books of

18 Olde Port Fisheries Division of Del Mar Seafoods, Inc.;

19 correct?

20 A. Yeah. That operation is the one who did

21 the advances.

22 Q. To Barry Cohen, Point Loma?

23 A. To both.

24 Q. Why was it that Barry Cohen was asked to

25 sign a promissory note in favor of Del Mar Seafoods, Inc.



00198

1 in October of 2003?

2 A. Well, just to formalize it.

3 Q. Why?

4 A. I don't think any particular reason except  
5 for just to formalize it.

6 Q. Did you receive instructions from Joe  
7 Cappuccio to formalize the amount of money that Barry  
8 Cohen owed Del Mar Seafoods, Inc.?

9 A. My guess it's probably something Joe and  
10 Barry talked about, but you'd have to ask him to be sure.

11 Q. I'm just asking -- I'm taking your  
12 deposition today.

13 A. Okay. Yeah, no, I don't know.

14 Q. You don't recall --

15 A. Joe was, obviously, aware of us preparing  
16 the promissory note, but I can't recall if it's something  
17 he had instructed me to do. It's something Barry had  
18 instructed me to do, but it's something that we did. And  
19 the only thing behind it is just to formalize it. There's  
20 no -- we're not out to get him. He's not out to get us.

21 Q. My question is whether you have any  
22 recollection of receiving an instruction from Joe  
23 Cappuccio some time in or around the last quarter of 2003  
24 to figure out how much money Barry Cohen owes Del Mar  
25 Seafoods, Inc. and reduce it to a promissory note.

00199

1 A. I don't know that.

2 Q. You don't have that recollection?

3 Again, what I'm looking for is, either --

4 whether you have a recollection or whether you're saying

5 categorically, no, that did not happen?

6 A. I mean, Joe -- this -- Joe would be well

7 aware of this from the start. Now, how it started, you'd

8 have to ask him.

9 Q. What I'm trying to get --

10 A. I mean, you're asking me if I -- you know,

11 if he instructed me to do it. I mean, he is aware of it.

12 It's probably something we had talked about. I mean, I

13 don't know exactly how it came about, but there's no

14 substance behind it except for just to formalize it.

15 Q. Was Barry Cohen, to your knowledge,

16 assessed interest under the terms of the promissory note

17 he signed in favor of Del Mar Seafoods, Inc.?

18 A. The promissory note does state an interest

19 rate.

20 Q. Was he ever asked to pay it?

21 A. No.

22 Q. Was he ever invoiced?

23 A. No.

24 Q. Why?

25 A. We just didn't do that. It was just,

00200

1 basically, just to have something on paper just in case.

2 You never know. You know, something may happen to poor

3 little Barry, but it's just to formalize it.

4 Q. Okay. And was Barry Cohen ever asked to

5 sign any other promissory note in favor of Del Mar

6 Seafoods, Inc.?

7 A. No. They -- the purpose of the promissory

8 note was just to formalize it, and that was it.

9 Q. Can I see the Chris Cohen W-2s.

10 When did Chris Cohen cease being an employee of

11 Del Mar Seafoods, Inc.?

12 A. Well, when Barry had completed the -- I

13 don't know the exact dates. But, obviously, when Barry

14 chose it was time to let her go.

15 Q. When Barry chose to let her go?

16 A. Correct. Barry -- you know, who laid off

17 the people when he felt it was appropriate.

18 Q. Are you talking about the people who were

19 employed by Del Mar in Avila?

20 A. The people he employed in the Avila Beach

21 operation; correct.

22 Q. Who were on Del Mar Seafoods Inc.'s

23 payroll?

24 A. Well, we just prepare the checks for him.

25 Q. Okay. They were, technically, Del Mar

# Exhibit 23

05 25 05 01:47P

Case 3:07-cv-02952-WHA Document 129 Filed 03/13/2008

DHS, USCG, CG-1270 (REV. 06-03)


OMB APPROVED  
2115-0110

## UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

## CERTIFICATE OF DOCUMENTATION

VESSEL NAME POINT LOMA		OFFICIAL NUMBER 515298	IMO OR OTHER NUMBER 7049354	YEAR COMPLETED 1968
HAILING PORT PORT SAN LUIS, CA		HULL MATERIAL STEEL		MECHANICAL PROPULSION YES
GROSS TONNAGE 128 GRT	NET TONNAGE 86 NRT	LENGTH 70.8	BREADTH 21.5	DEPTH 11.7
PLACE BUILT SIRACUSAVILLE, LA				
OWNERS F/V POINT LOMA FISHING COMPANY INC		OPERATIONAL ENDORSEMENTS FISHERY		
MANAGING OWNER F/V POINT LOMA FISHING COMPANY INC 7121 FERN FLAT ROAD APTOS, CA 95003				
RESTRICTIONS NONE				
ENTITLEMENTS NONE				
REMARKS NONE				
ISSUE DATE DECEMBER 15, 2006		THIS CERTIFICATE EXPIRES JANUARY 31, 2008		
VDS: 0455934		 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER		



PREVIOUS EDITION OBSOLETE. THIS CERTIFICATE MAY NOT BE ALTERED

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To-Davis Wright Tremain Page 002

COHEN 00001

# Exhibit 24



James P. Walsh, CSB. No. 184620  
 Gwen Fanger, CSB No. 191161  
 DAVIS WRIGHT TREMAINE LLP  
 505 Montgomery Street, Suite 800  
 San Francisco, California 94111-3611  
 Telephone: (415) 276-6500  
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Attorneys for Defendants and Claimant  
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam*, and  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**DECLARATION OF BARRY A.  
 COHEN IN SUPPORT OF  
 DEFENDANTS' MOTION TO  
 VACATE ORDER OF ARREST**

**Date: August 16, 2007**

**Time: 8:00 a.m.**

**Place: Courtroom 9, 19<sup>th</sup> Floor**

I, Barry A. Cohen, declare as follows:

1. I am a resident of the State of California and currently reside in Santa Maria, California. I am a named Defendant in this lawsuit. I make this declaration in support of Defendant's Motion to Vacate Order of Arrest. The facts set forth in this declaration are personally known to me to be true and, if called as a witness, I could and would testify to the following:

2. For most of my adult life, I have been engaged in various aspects of the fishing

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1 industry in California, including in the processing sector and in owning and operating fishing  
2 vessels. I have been engaged in the fisheries business in California for over 40 years.

3 3. For at least 10 years, I have done business with the Plaintiff in this case, Del Mar  
4 Seafoods, Inc. ("Del Mar"). In fact, from 2004 until 2006, I was employed by Del Mar in its  
5 processing plant at Watsonville, California and was paid \$2,000 a week. The company also  
6 asked me to help deal with issues at its processing plant in Astoria, Oregon in 2006, which I did.  
7 Upon my return from Oregon, I was let go in October 2006 because I was told by Joe Cappuccio  
8 that the company no longer wished to be in the groundfish business. I had been told by Joe  
9 Roggio, prior to moving from Cambria, California to Aptos, California in 2004, that I could have  
10 a job with Del Mar as long as I wanted if I moved up there to work for them.

11 4. In February 1999, Del Mar and I formed a joint venture, the purpose of which was  
12 to buy, process, and sell fish from a site I leased at the Port San Luis Pier in Avila Beach,  
13 California. Del Mar agreed to fund the joint venture and I supplied a processing crew, access to  
14 fishing vessel production, and sales relationships. In 2001, or thereabouts, Del Mar and I began  
15 planning for a new joint venture in Mexico, using the F/V POINT LOMA. In this context, I was  
16 dealing with Joe Cappuccio, the President of Del Mar. Del Mar had advanced funds to me to  
17 upgrade the F/V POINT LOMA as part of an anticipated 50/50 partnership in the Vessel. The  
18 agreement for this 50/50 partnership was oral. Later that year, because Del Mar did not want to  
19 continue the 50/50 partnership, but had provided funds to upgrade the vessel, we agreed to turn  
20 Del Mar's contributed funds into a loan.

21 5. About two years later, in 2003, Del Mar requested that we provide security for this  
22 prior loan. We then entered into a Promissory Note with Del Mar to make arrangements to repay  
23 the company over an extended period of time. We also entered into a Ship Mortgage with Del  
24 Mar as security for repayment of the loan amount of \$215,000. In the transaction, we were not  
25 represented by counsel. Del Mar's attorneys drafted the Promissory Note and Ship Mortgage.  
26 The entire purpose of the financing arrangement was to provide security for repayment of the  
27 funds used to upgrade the vessel, and no other.

1           6.     Chris Cohen and I are still married and I am acting in this case as agent for the  
2 interests of the marital community. My wife currently resides in Arizona.

3           7.     In 2004, we transferred, the ownership of the F/V POINT LOMA to a Subchapter S  
4 corporation, the F/V Point Loma Fishing Company, Inc., of which I am the President and  
5 manager and in which my wife and I own the stock 50/50. The F/V POINT LOMA remains  
6 subject to Del Mar's Ship Mortgage. Attached as Exhibit A to this declaration is a true copy of  
7 the vessel's current documentation certificate issued by the U.S. Coast Guard. I am acting in this  
8 case as the agent for the owner of the vessel, the F/V Point Loma Fishing Company, Inc.

9           8.     The F/V POINT LOMA engages in the groundfish fisheries located outside the  
10 State of California and in the U.S. Exclusive Economic Zone ("EEZ")(from three to 200 nautical  
11 miles) and is licensed to land its catch only in the State of California. The vessel's home port is  
12 Port San Luis, California. I have never used the vessel to fish anywhere except in the EEZ off  
13 California. At no time have I ever threatened to move the vessel to another state or another part  
14 of California, nor could I do so very easily without obtaining new licenses and new markets.

15           9.     A special limited entry permit is required to engage in the Pacific Groundfish  
16 Fisheries off California regulated by the National Oceanic and Atmospheric Administration  
17 ("NOAA") in the U.S. EEZ. However, unlike most other such permits, the NOAA permit is  
18 issued not to the vessel but to a person qualifying as the owner of the permit. The NOAA permit  
19 has been issued to, and is owned by, the F/V Point Loma Fishing Company, Inc. Attached as  
20 Exhibit B is a copy of the NOAA permit held by the company. The permit may be used on the  
21 F/V POINT LOMA or it may be transferred to another vessel of similar length.

22           10.    The Promissory Note and Ship Mortgage do not cover the NOAA permit for at  
23 least two reasons. First, neither the Promissory Note nor the Ship Mortgage contains language  
24 that includes the NOAA permit as security. Second, and more importantly, NOAA does not  
25 recognize the existence of liens against such permits. Attached as Exhibit C is a copy of a letter  
26 from NOAA confirming this position. Thus, I have never agreed to provide Del Mar a security  
27 interest in this NOAA permit.

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11. In December of 2004, while I was working for Del Mar, I made a \$5,000 payment on the Promissory Note. Attached as Exhibit D is the check representing this payment. At the end of 2005, Joe Cappuccio and Joe Roggio, in a meeting, told me that Del Mar's bank, which provided a credit line to the company, had expressed concern about the size of the loan for the F/V POINT LOMA. Joe Cappuccio asked me to make a large advance payment on the loan. Later, Joe Roggio told me at another meeting that, if I made the advance payment, he would see to it that the vessel loan with Del Mar would be interest free. Because of this promise and understanding, we took out a home equity loan on our house and paid Del Mar \$175,000, with the expectation that no interest would be due on the Promissory Note and that the payment comprised advance monthly payments into the future. The payment date was November 10, 2005. Attached as Exhibit E is the check for this advance payment on the Promissory Note. It was my understanding that this payment (and the earlier one) reduced the total amount of the debt from \$215,000 to \$35,000; that monthly payments were covered well into the future; and that no interest would be due on payment of the remaining amount. When I delivered the check to Joe Cappuccio, I told him I would pay the rest as soon as I can. In response, he said it was now such a small amount that he was not concerned about it any more, which reinforced ~~by~~ understanding that I had made advance payments on the Note.

12. Within a month or so after this advance payment, I recall receiving a piece of paper which purported to be a Schedule of Payments from Joe Roggio. Attached as Exhibit F is the copy of the document I received from Joe Roggio. The Schedule contains references to various debts not related to the Promissory Note. I looked it over and told him this does not look right to me. He said he was just "cleaning up the books." I didn't want to tell him how to keep his books but I did not tell him that the \$175,000 payment could be applied to anything other than the Promissory Note, nor did I agree with any of the amounts listed in his Schedule of Payments. For certain, he did not expressly ask if I was agreeable to applying the \$175,000 to these other debts or to treating the other debts as "advances" under the Promissory Note, which would then be secured by the Ship Mortgage.

/s/ Barry A. Cohen  
Barry A. Cohen

# Exhibit 25



CERTIFIED COPY

LEONARD CHOEN

January 10, 2008

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

\* \* \*

DEL MAR SEAFOODS, INC., )

PLAINTIFF, )

VS. )

CASE NO. CV 07-02952 WHA

BARRY COHEN, CHRIS COHEN, )  
(AKA CHRISTENE COHEN) IN )  
PERSONAM AND F/V POINT LOMA, )  
OFFICIAL NUMBER 515298, A )  
1968 STEEL-HULLED, 126-GROSS )  
TON, 70.8-FOOT LONG FISHING )  
VESSEL, HER ENGINES, TACKLE, )  
FURNITURE, APPAREL, ETC., )  
IN REM, AND DOES 1-10, )

DEFENDANTS. )

AND RELATED COUNTERCLAIMS. )

DEPOSITION OF LEONARD COHEN  
SAN LUIS OBISPO, CALIFORNIA  
THURSDAY, JANUARY 10, 2008  
11:06 A.M. - 11:40 A.M.

REPORTED BY CINDY D. GRIFFITH  
CSR #7281

LEONARD CHOEN

January 10, 2008

Page 10

1 COULD RECOVER FUNDS FROM YOU IN CONNECTION WITH THE  
2 TRANSACTIONS WE'RE GOING TO DISCUSS. DO YOU UNDERSTAND  
3 THAT?

4 THE WITNESS: OKAY.

5 (DISCUSSION HELD OFF THE RECORD.)

6 MR. POULOS: LET'S GET GOING. HOPEFULLY THIS  
7 WON'T TAKE TOO LONG.

8 Q MR. COHEN, WITH RESPECT TO THE AVILA BEACH  
9 LITIGATION, THAT WAS THE LITIGATION, I USE THAT  
10 SHORTHAND, BUT I'M REFERRING TO THE LITIGATION THAT WAS  
11 BETWEEN YOUR FATHER, YOURSELF, OLDE PORT INN AND OLDE  
12 PORT FISHERIES, INC. AGAINST THE PORT SAN LUIS HARBOR  
13 DISTRICT. DO YOU KNOW THAT LITIGATION?

14 A YES.

15 Q OKAY. AND IN THAT LITIGATION, YOU AND YOUR  
16 FATHER RETAINED THE LAW FIRM OF MILLER, STAR, RIGALLI;  
17 IS THAT RIGHT?

18 A THAT IS CORRECT.

19 Q AND YOU RECEIVED INVOICES FROM THAT LAW FIRM  
20 FOR THEIR SERVICES; IS THAT CORRECT?

21 A THAT IS CORRECT.

22 Q AND BY AND LARGE, YOU PAID FOR MUCH OF THOSE  
23 LEGAL FEES; IS THAT CORRECT?

24 A THAT IS CORRECT.

25 Q BUT THEY WERE SENT TO BOTH YOU AND YOUR FATHER

Page 11

1 BEING JOINTLY LIABLE FOR THOSE FEES?

2 A THAT WOULD BE MY UNDERSTANDING.

3 Q ALL RIGHT. IS THERE AN AMOUNT OF THOSE FEES  
4 THAT HAS NOT BEEN PAID?

5 A YES.

6 Q AND CAN YOU TELL US HOW MUCH OF THE FEES ARE  
7 OUTSTANDING THAT HAVE NOT BEEN PAID?

8 A THIS IS JUST AN APPROXIMATION.

9 Q YES.

10 A ABOUT A MILLION TWO.

11 Q OKAY. AND HOW MUCH -- IN ADDITION TO THAT  
12 OUTSTANDING AMOUNT, HOW MUCH IS -- WAS PAID?

13 A A LITTLE OVER A MILLION DOLLARS.

14 Q SO THE TOTAL FEES, UNDERSTANDING THIS IS AN  
15 ESTIMATE, IS SOMEWHERE AROUND 2.2 MILLION?

16 A ON OUR SIDE, CORRECT.

17 Q IN -- WITH RESPECT TO THOSE FEES, IS THERE ANY  
18 AGREEMENT BETWEEN YOU AND YOUR FATHER REGARDING WHICH OF  
19 YOU WILL BE RESPONSIBLE FOR PAYING THOSE FEES ULTIMATELY  
20 IF -- IF THEY ARE OWED?

21 A THE ONLY AGREEMENT THAT I'M AWARE OF BETWEEN MY  
22 FATHER AND I WAS WHEN WE FILED THE LAWSUIT, WE BOTH  
23 AGREED THAT WE WOULD BE 50-50, AS FAR AS RESPONSIBILITY  
24 FOR -- WE DIDN'T EVEN KNOW WHAT WAS COMING UP. JUST  
25 RESPONSIBLE FOR WHATEVER.

Page 12

1 Q OKAY. THE -- IN THAT LITIGATION, THERE WAS A  
2 MOTION FOR RECOVERY OF ATTORNEYS FEES BY YOU AND YOUR  
3 FATHER AND YOUR RESPECTIVE COMPANIES CONTENDING YOU WERE  
4 THE PREVAILING PARTIES; IS THAT RIGHT?

5 A I BELIEVE SO.

6 Q AND YOU RECALL THAT THE COURT DID NOT AWARD YOU  
7 THE FEES ON THAT MOTION?

8 A I AGREE.

9 Q IN THAT LITIGATION, YOUR FATHER FILED A  
10 DECLARATION, BARRY COHEN FILED A DECLARATION SAYING THAT  
11 IF HE DID NOT RECOVER THE ATTORNEYS' FEES ON THAT  
12 MOTION, THAT HE MIGHT HAVE TO FILE -- OR IN THAT  
13 LITIGATION, HE MIGHT HAVE TO FILE FOR BANKRUPTCY. ARE  
14 YOU AWARE OF THAT DECLARATION?

15 A POSSIBLY. YOU KNOW, I DON'T RECALL EVERY --  
16 EVERY DECLARATION IN THE 1,700 PAGES THAT WERE -- THAT  
17 WERE PRODUCED. JUST IN THAT ASPECT, BUT --

18 Q IS IT -- DID YOU EVER DISCUSS WITH YOUR FATHER  
19 THE POSSIBILITY THAT HE WOULD DECLARE BANKRUPTCY IF HE  
20 DID NOT RECOVER THE ATTORNEYS' FEES?

21 A I HAVE NOT DISCUSSED -- I DO NOT RECALL HIM  
22 MENTIONING TO ME FILING BANKRUPTCY IN RELATIONSHIP TO  
23 THIS LEGAL ACTION, BECAUSE THIS LEGAL ACTION ISN'T OVER  
24 YET.

25 Q THE LEGAL ACTION AGAINST THE HARBOR DISTRICT?

Page 13

1 A CORRECT.

2 Q HAS HE MENTIONED TO YOU THE POTENTIAL FOR HIS  
3 FILING OF BANKRUPTCY IN ANY OTHER CONTEXT?

4 A I DO NOT RECALL HIM MENTIONING TO ME ANYTHING  
5 TO DO WITH BANKRUPTCY.

6 Q THE OLDE PORT INN OPERATES AT A FACILITY IN --  
7 ON THE PIER AT AVILA BEACH; IS THAT CORRECT?

8 A YOU MIGHT HAVE TO HELP ME OUT ON "FACILITY."  
9 YOU MEAN ON A LEASE, LEASED AREA?

10 Q YEAH. YOU SHARE A COMMON LEASED AREA FOR OLDE  
11 PORT INN AND OLDE PORT FISHERIES, INC.; IS THAT RIGHT?

12 A IT COULD BE DESCRIBED THAT WAY.

13 Q AND THAT'S ON THE PIER AT THE PORT THERE IN --  
14 IN AVILA BEACH?

15 A CORRECT.

16 Q THE -- WITH RESPECT TO OLDE PORT INN, THAT IS A  
17 RESTAURANT BUSINESS; IS THAT CORRECT?

18 A CORRECT.

19 Q AND WHERE DO YOU GET THE FISH INVENTORY THAT  
20 YOU SELL AT THE RESTAURANT?

21 A PLEASE DESCRIBE A TIME PERIOD.

22 Q OKAY. DURING THE TIME PERIOD, SAY, OF 1999 TO  
23 2004.

24 A I WOULD SAY CENTRAL COAST SEAFOODS IS ONE  
25 PURVEYOR. JORDANOS WAS ANOTHER SEAFOOD PURVEYOR FOR